

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER GERACE, JR.,

Defendant.

Case No. 1:19-cr-227

1:23-cr-37

(LJV)

November 21, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF ANTHONY CASULLO - DAY 2
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PRESENT:

KAREN A. CHAMPOUX, USA PARALEGAL

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1 (Excerpt commenced at 9:54 a.m.)

2 (Jury is present.)

09:54AM 3 **THE COURT:** I remind the witness that he's still
09:54AM 4 under oath.

09:54AM 5 You may continue, Mr. Cooper.

09:54AM 6 **MR. COOPER:** Thank you, Judge.

09:54AM 7

09:54AM 8 **A N T H O N Y C A S U L L O**, having been previously duly
09:54AM 9 called and sworn, continued to testify as follows:

09:54AM 10

09:54AM 11 **(CONT'D) DIRECT EXAMINATION BY MR. COOPER:**

09:54AM 12 Q. I think where we left off yesterday, Mr. Casullo, was we
09:54AM 13 were talking about returning -- receiving a return for
09:54AM 14 Peter -- Peter Gerace's phone records, and going to your boss
09:55AM 15 with those results; do you remember that?

09:55AM 16 A. Yes.

09:55AM 17 Q. Okay. Was Bongiovanni's phone number present in the toll
09:55AM 18 records for Peter Gerace's phone?

09:55AM 19 A. Yes.

09:55AM 20 Q. Did you advise your supervisor that that was the case?

09:55AM 21 A. Yes.

09:55AM 22 Q. Okay. Did you receive guidance or a directive from your
09:55AM 23 supervisor at that time?

09:55AM 24 A. Yes.

09:55AM 25 Q. What did he direct you?

09:55AM 1 A. He just directed me to continue on with the

09:55AM 2 investigation, and that he was going to be having a

09:55AM 3 conversation with Bongiovanni.

09:55AM 4 Q. Okay. Earlier you described that in the beginning of

09:55AM 5 your time at the DEA Buffalo resident office, you had a

09:55AM 6 professional -- friendly relationship with Bongiovanni. Did

09:55AM 7 that change after you subpoenaed Peter Gerace's phone

09:55AM 8 records?

09:55AM 9 A. Yes.

09:55AM 10 Q. Did it change after you brought the fact that

09:56AM 11 Bongiovanni's phone number was present in those records to

09:56AM 12 the attention of your supervisor?

09:56AM 13 A. Yes.

09:56AM 14 Q. How so?

09:56AM 15 A. He was basically ignoring me in the office, wouldn't talk

09:56AM 16 to me. I could tell that he was upset.

09:56AM 17 Q. Was it obvious to you?

09:56AM 18 A. Very obvious. We had just worked together on a long

09:56AM 19 investigation for eight months, and his behavior was

09:56AM 20 completely different.

09:56AM 21 Q. Did that make you kind of, you know, uncomfortable for

09:56AM 22 lack of a better word in the workplace?

09:56AM 23 A. Oh, it did, absolutely.

09:56AM 24 Q. What, if anything, did you do in response to that?

09:56AM 25 A. I asked him if he'd be willing to talk to me privately in

09:56AM 1 one of our conference rooms.

09:56AM 2 Q. Did that happen at the Electric Tower DEA office?

09:56AM 3 A. Yes.

09:56AM 4 Q. Okay. When you asked Bongiovanni if he'd be willing to

09:56AM 5 talk to you privately in a conference room, did he respond?

09:56AM 6 A. He agreed.

09:56AM 7 Q. Where'd you go?

09:56AM 8 A. To that conference room, we have a conference room at the

09:57AM 9 DEA office, it's kind of, it's between the two groups, and

09:57AM 10 it's basically just adjacent to where my group sat.

09:57AM 11 Q. Now if you -- excuse me. If you subpoenaed Gerace's

09:57AM 12 phone records around June of 2016, approximately when is this

09:57AM 13 conversation in the conference room with Bongiovanni

09:57AM 14 happening?

09:57AM 15 A. It was shortly after those phone records came back.

09:57AM 16 Maybe a few days.

09:57AM 17 Q. Okay. So we're still talking about the early summer of

09:57AM 18 2016?

09:57AM 19 A. Yes.

09:57AM 20 Q. Did you go in the conference room with him?

09:57AM 21 A. Yes.

09:57AM 22 Q. Was the door open or closed once you were in there?

09:57AM 23 A. It was open -- I can't, when we were in there, I can't

09:57AM 24 remember if it was closed when we went in, I think it was

09:57AM 25 open, and then either I closed it or he closed it when we

09:57AM 1 went in.

09:57AM 2 Q. Okay. That's, I guess, the question I'm asking, is once

09:57AM 3 you guys go inside, does the door get closed?

09:57AM 4 A. Yes.

09:57AM 5 Q. Is it just the two of you in there?

09:57AM 6 A. Yes.

09:58AM 7 Q. Was that your intention to speak privately with him?

09:58AM 8 A. Yes.

09:58AM 9 Q. Who spoke first to begin the conversation?

09:58AM 10 A. I did.

09:58AM 11 Q. What did you say? Tell the jury.

09:58AM 12 A. Generally, that I was apologetic, that I wasn't trying to

09:58AM 13 get him in trouble, I could tell he was upset, and that that

09:58AM 14 was not my intention was to get him in trouble.

09:58AM 15 Q. Did Mr. Bongiovanni respond?

09:58AM 16 A. Yeah, he did.

09:58AM 17 Q. Can you describe for the jury how he responded?

09:58AM 18 A. He was upset. And he said some things.

09:58AM 19 Q. Explain what you mean when you say he was upset.

09:58AM 20 Describe what he looked like, what he was acting like.

09:58AM 21 A. He -- his voice was elevated. He had an angry look on

09:58AM 22 his face. He was -- he was upset. He was mad. He was mad

09:58AM 23 at me, he was mad at the situation.

09:58AM 24 Q. Okay. And after you say to him, hey, I'm not trying to

09:58AM 25 get you in trouble, in sum and substance, what are the words

1 that he says to you? The first thing he says to you?

2 A. He said this is bullshit.

3 Q. Is he saying that in a conversational friendly tone of
4 voice?

5 A. No, he was still upset. He was mad. And, again, he
6 wasn't screaming, but his voice was elevated.

7 Q. After the defendant says to you this is bullshit, in an
8 elevated voice, who is the next person to speak after that,
9 you or him?

10 A. He continued to speak.

11 Q. What did he say?

12 A. He spontaneously blurted out that that kid called me,
13 referring to Gerace, when a stripper overdosed in his club
14 and I told him, meaning him --

15 **MR. FOTI:** Objection, Judge.

16 **THE COURT:** Basis?

17 **MR. FOTI:** It's hearsay.

18 **MR. COOPER:** It's a coconspirator statement, Judge.

19 **MR. FOTI:** No, no, it isn't. And it's not in
20 furtherance of a conspiracy.

21 **THE COURT:** Stop. Stop. Stop.

22 **MR. TRIPI:** There has already been a pretrial ruling
23 on this exact conversation, Your Honor.

24 **MR. FOTI:** Judge, can we -- we should just approach,
25 I think.

2 | (Sidebar discussion held on the record.)

5 **MR. FOTI:** That he's -- that the conversation that
6 Mr. Bongiovanni and him are having --

8 | **MR. FOTI:** -- in regard to --

11 **MR. FOTI:** Any statement along those lines, I guess
12 the argument can be made that it's in furtherance.

16 | **THE COURT:** Overruled.

17 | (Sidebar discussion held on the record.)

18 **THE COURT:** The objection is overruled.

19 **MR. COOPER:** Can you let us know how far we got,
20 Ms. Sawyer? Thank you.

21 (The above-requested question was then read by the
22 reporter.)

23 BY MR. COOPER:

24 Q. And I told him, what?

25 | A. To get her out of the club.

10:01AM 1 Q. Who was saying the words, I told him to get her out of
10:01AM 2 the club?

10:01AM 3 A. Bongiovanni.

10:01AM 4 Q. Who's the "him" in that sentence?

10:01AM 5 A. Gerace.

10:01AM 6 Q. Was that -- was Gerace the only person up to that point
10:01AM 7 that you were talking about?

10:01AM 8 A. Yes.

10:01AM 9 Q. Was the defendant worked up when he said that to you?

10:01AM 10 A. Yes.

10:01AM 11 Q. Was he elevated?

10:01AM 12 A. Same, elevated, worked up. He was upset.

10:01AM 13 **MS. CHALBECK:** Nick.

10:01AM 14 **BY MR. COOPER:**

10:01AM 15 Q. I think I misspoke. I said "the defendant." I'm
10:01AM 16 speaking about Bongiovanni.

10:01AM 17 When Bongiovanni's speaking to you, was he elevated?

10:01AM 18 A. Yes.

10:01AM 19 Q. Okay.

10:01AM 20 **MR. COOPER:** Thank you, Casey.

10:02AM 21 **BY MR. COOPER:**

10:02AM 22 Q. You mentioned that Bongiovanni said to you that kid
10:02AM 23 called me. Are those the words you recall him using?

10:02AM 24 A. Yes.

10:02AM 25 Q. That kid?

10:02AM 1 A. Yes.

10:02AM 2 Q. In the context of the conversation that you were a part
10:02AM 3 of, who was "that kid" referring to?

10:02AM 4 A. Gerace.

10:02AM 5 Q. Do those words that Bongiovanni said to you in the
10:02AM 6 conference room at DEA stick out in your mind even now eight
10:02AM 7 years later?

10:02AM 8 A. Oh, it was shocking.

10:02AM 9 Q. After the defendant told -- or, after Bongiovanni -- I'm
10:02AM 10 sorry -- told you that kid called me when a stripper
10:02AM 11 overdosed and I told him to get her out of the club, what was
10:02AM 12 your immediate reaction when you heard that?

10:02AM 13 A. Shocked. Trying process what he had just said. If he
10:02AM 14 had witnessed -- been part of some conspiracy, some coverup.
10:02AM 15 I'm trying to figure this all out at once because I was so
10:03AM 16 caught off guard when he said it. It was unsolicited. He
10:03AM 17 blurted it out.

10:03AM 18 And I went from having a conversation initially thinking
10:03AM 19 of being apologetic, that I wasn't trying to get him involved
10:03AM 20 in something. Because my belief at the time was maybe he
10:03AM 21 just was careless with who he associated with, or who his
10:03AM 22 friends were, to what he had just said to me -- what I just
10:03AM 23 said.

10:03AM 24 It just was -- it was a shocking thing to hear.

10:03AM 25 Q. When you walked into the conference room to begin that

10:03AM 1 conversation, were you expecting to hear something like what
10:03AM 2 Bongiovanni said to you?
10:03AM 3 A. No. No. Not at all.
10:03AM 4 Q. After Bongiovanni said to you that that kid called him
10:03AM 5 when a stripper overdosed at his club and he told him to get
10:03AM 6 her out of there, who spoke next, you or Bongiovanni?
10:04AM 7 A. He did. I didn't say anything.
10:04AM 8 Q. What did he say?
10:04AM 9 A. He said, isn't he friends with your brother-in-law?
10:04AM 10 Q. What was his tone of voice when Bongiovanni said to you,
10:04AM 11 isn't he friends with your brother-in-law?
10:04AM 12 A. It was almost accusatory.
10:04AM 13 Q. Did you -- who did you believe he was referring to when
10:04AM 14 he said that? Your brother-in-law?
10:04AM 15 A. My wife's brother, Phil Domiano.
10:04AM 16 Q. Okay. And I'm just gonna kind of work my way through it.
10:04AM 17 In that sentence when Bongiovanni says isn't he friends with
10:04AM 18 your brother-in-law, who is the "he" referring to?
10:04AM 19 A. Gerace.
10:04AM 20 Q. Did you respond to that?
10:04AM 21 A. Yes.
10:04AM 22 Q. What'd you say?
10:04AM 23 A. I said, yes, he is. They are friends. And my
10:04AM 24 brother-in-law has caused me -- I said, and he has caused me
10:04AM 25 and my wife a lot of problems in the past.

10:04AM 1 Q. After you said that, who spoke next?

10:04AM 2 A. He did.

10:05AM 3 Q. What did -- who's "he?"

10:05AM 4 A. Bongiovanni.

10:05AM 5 Q. What did Bongiovanni say when you told him, yeah, you

10:05AM 6 know, he's friends -- yes, my brother-in-law has caused me

10:05AM 7 and my family problems in the past, what did he say next?

10:05AM 8 A. Something to the effect of it sounds like he's your

10:05AM 9 problem.

10:05AM 10 Q. Are you Italian, Special Agent Casullo?

10:05AM 11 A. Italian by descent. Was my father was Italian, my

10:05AM 12 grandparents were from Italy. My mother's -- my mother was

10:05AM 13 Italian, so yes.

10:05AM 14 Q. Special Agent Bongiovanni, did you have an understanding

10:05AM 15 that he was of Italian descent as well?

10:05AM 16 A. I did have an understanding of that as well, yes.

10:05AM 17 Q. Did he bring that up during the conversation?

10:05AM 18 A. Yes, he did.

10:05AM 19 Q. Can you describe that for the jury, what did he say?

10:05AM 20 A. He asked me if I hated Italians.

10:05AM 21 Q. What was his tone of voice when he asked you if you hated

10:05AM 22 Italians?

10:05AM 23 A. Still almost accusatory, upset. Yeah. It was a very,

10:05AM 24 very direct thing that he asked me.

10:05AM 25 Q. When he asked you if you hated Italians, what did you

10:06AM 1 interpret his meaning to be in the conversation, in the
10:06AM 2 context of the conversation?

10:06AM 3 A. Sure. I took that to mean that I was unfairly -- that he
10:06AM 4 didn't want me to target Peter Gerace. That Peter Gerace is
10:06AM 5 Italian, and -- and why are you targeting other Italians?
10:06AM 6 Like, why would you be that guy doing that? That's how I
10:06AM 7 took it.

10:06AM 8 You're Italian. You're gonna target another Italian?
10:06AM 9 That type of thing.

10:06AM 10 Q. Did that matter to you at all?

10:06AM 11 A. Did what?

10:06AM 12 Q. Investigating someone else who was Italian?

10:06AM 13 A. No.

10:06AM 14 Q. Did you care about that?

10:06AM 15 A. No.

10:06AM 16 Q. In your 20-plus-year career in law enforcement, has that
10:06AM 17 ever mattered to you?

10:06AM 18 A. No. And no one has ever said anything like that to me
10:06AM 19 before either. Ever.

10:06AM 20 Q. Did you -- did you respond to that when the def -- when
10:06AM 21 Bongiovanni said to you, what, do you hate Italians?

10:06AM 22 A. I said no.

10:06AM 23 Q. After you said no, who spoke next?

10:06AM 24 A. He did.

10:06AM 25 Q. What did Bongiovanni say next?

1 A. He said a horrible racial slur.

2 Q. Okay. So, I'm not gonna ask you to say the exact words,

3 I'm gonna ask you a -- I'm gonna ask you to recount what

4 Bongiovanni said to you, but you can't use the actual words.

5 So tell the jury what he said to you.

6 A. He said, we should be investigating black people, but he

7 used the N-word, and he said that we should be investigating

8 Hispanic people, but he used an S-word that was a slur.

9 Q. When he said that to you, what was Bongiovanni's tone of
10 voice like?

11 A. He said it quieter. Not like a whisper, but his voice
12 wasn't as elevated. It was lower. It was quieter.

13 Q. You described earlier when he was making statements to
14 you throughout this conversation, that he was elevated and
15 upset, do you remember describing him being like that?

16 A. Yes.

17 Q. When he makes this comment to you using racial slurs that
18 start with the letter N and the letter S talking about who he
19 thinks you should be investigating, did he lower his tone of
20 voice?

21 A. It -- it again, it wasn't a whisper. It was almost like
22 he didn't want other people to hear, but we were the only two
23 in the room.

24 Q. Was it, I guess my question is, was it quieter than
25 earlier parts of the conversation?

1 A. Yes.

2 Q. Were you inside of a federal law enforcement workplace
3 when that conversation is happening?

4 A. Yes.

5 Q. When Bongiovanni told you that you should be
6 investigating N-words and S-words, what was your immediate
7 reaction to that?

8 A. Again, shocked. Disbelief. Anger. That another federal
9 agent would think that I -- or, assume that I would be okay
10 with someone saying that to me.

11 So besides the shock of what he said, the insult to me
12 that I would be okay with that. That even if he felt that
13 way, that he would say that in front of me.

14 Q. Who's the next person that spoke after Bongiovanni said
15 that to you?

16 A. I did.

17 Q. What did you say?

18 A. I said, we should be investigating all criminals.

19 Q. Did he respond to that? Or did you keep talking?

20 A. No. He -- he -- he did go on to say something else.

21 Q. Okay. Let's -- we'll pause there for a second.

22 So at this time, in your mind you've described yourself,
23 I think, as shocked and reeling. Does your, kind of,
24 motivation or -- or drive for what should happen during this
25 conversation change once he says that?

1 A. It's all -- I'm trying to process all of this. And I'm
2 changing from initially when I went in thinking what I was
3 walking into and what I was trying to address, to at this
4 point, trying to process what he had said earlier, what he
5 just said to me with the racial slurs. And processing -- it
6 was almost like things that I've learned in law enforcement
7 to stay calm in really bad situations, figure out a way to
8 get out of it, and not alarm him.

9 Because at this point, something's terribly wrong, and I
10 don't want him to know that I feel this way because
11 something's terribly wrong. And trying to almost hopefully
12 have an opportunity to just get out of that conference room
13 and figure out what the hell I'm gonna do.

14 Q. In the aftermath of that moment that you just described,
15 did Bongiovanni make some statements to kind of walk back
16 what he had just said?

17 A. He did.

18 Q. What did he say?

19 A. He said that Gerace was more of a white collar criminal,
20 that he was more of a drug user.

21 **MR. FOTI:** Judge, I'm going to object again.

22 **THE COURT:** No. Overruled.

23 **THE WITNESS:** So, it was almost like he was walking
24 it back. Which was initially, to me, a relief and an
25 opportunity and a segue to have this -- to get out of this

10:10AM 1 situation.

10:10AM 2 **BY MR. COOPER:**

10:10AM 3 Q. All right. Let's stay on that point for one second.

10:11AM 4 At the DEA, as a special agent, is your primary focus
10:11AM 5 investigating white collar criminals?

10:11AM 6 A. No.

10:11AM 7 Q. Okay. Does the DEA primarily investigate crimes like
10:11AM 8 wire fraud or bank fraud?

10:11AM 9 A. No.

10:11AM 10 Q. Does the DEA generally pursue investigations against
10:11AM 11 people who are primarily or exclusively drug users?

10:11AM 12 A. No.

10:11AM 13 Q. When Bongiovanni said to you that this defendant, Gerace,
10:11AM 14 was more of a white collar type, fraud-type criminal and more
10:11AM 15 of a drug user, did you develop an impression of what
10:11AM 16 Bongiovanni was trying to get you to do?

10:11AM 17 A. Oh, yeah. Yes.

10:11AM 18 Q. Tell them about that.

10:11AM 19 A. Yeah. To -- to not investigate Gerace. He wasn't worth
10:11AM 20 investigating, right? He's a white collar criminal, he's not
10:11AM 21 a drug trafficker, he's just a user. He's not a drug
10:11AM 22 trafficker, we shouldn't be doing this. Why are we wasting
10:11AM 23 our time?

10:11AM 24 Q. Is that how you interpreted it?

10:11AM 25 A. Yes.

1 Q. Did Bongiovanni make statements to you about what he
2 would be willing to do if Gerace was, in fact, a drug dealer?

3 A. He did say something.

4 Q. What'd he say?

5 A. He said that if he was dirty, he would nail him to the
6 wall.

7 Q. Did you believe that at that point in the conversation?

8 A. No. No, of course not.

9 Q. Was that, based on your participation in the
10 conversation, was that completely inconsistent with
11 everything he had said so far?

12 A. It was bizarre. It was bizarre. To see someone act the
13 way he did initially, to the point and turn this around. I
14 don't know if he thought I would still be okay with what he
15 had said.

16 **MR. FOTI:** Objection.

17 **THE COURT:** Sustained. Just answer the questions,
18 please.

19 **BY MR. COOPER:**

20 Q. Was it -- I'm going to move on to another question
21 Mr. Casullo.

22 Did you see that last statement, if he's dirty I'll nail
23 him to a wall, did you see that as kind of a way out of the
24 conversation in the conference room?

25 A. Yes.

10:13AM 1 Q. What happened next?

10:13AM 2 A. I can't remember if anything was else -- was said

10:13AM 3 relating to that. But he did go on to say that Gerace's

10:13AM 4 parents were having a 50th wedding anniversary, and his

10:13AM 5 parents were going to be going, Joe Bongiovanni's parents

10:13AM 6 were going to be going to the 50th wedding anniversary.

10:13AM 7 Q. Did he explain when that was happening?

10:13AM 8 A. From what I remember it was, like, soon. I think it was

10:13AM 9 either, like, the next day. It was, like, very, very soon to

10:13AM 10 when we were talking.

10:13AM 11 Q. At that point when Bongiovanni is saying that to you, has

10:13AM 12 the temperature lowered a little bit in the conversation?

10:13AM 13 A. Yes.

10:13AM 14 Q. Is he still elevated like he was earlier?

10:13AM 15 A. No.

10:13AM 16 Q. Had you pushed back and told him I'm continuing my

10:13AM 17 investigation no matter what? Did you say that to him?

10:13AM 18 A. No.

10:13AM 19 Q. And did he kind of cool down?

10:13AM 20 A. Yes. Yeah. He appeared to.

10:14AM 21 Q. Did you walk out of that room with the impression that

10:14AM 22 Special Agent Bongiovanni did not want you to investigate

10:14AM 23 Peter Gerace?

10:14AM 24 A. Oh, absolutely.

10:14AM 25 Q. Fair to say it was a strong impression that you had --

10:14AM 1 A. Very strong.

10:14AM 2 Q. -- at that point?

10:14AM 3 A. Very strong.

10:14AM 4 Q. At that point, how long had you been a member of the DEA

10:14AM 5 Buffalo resident office?

10:14AM 6 A. Oh, not even a year. Eight months, maybe.

10:14AM 7 Q. How long had Bongiovanni been there?

10:14AM 8 A. To the best of my knowledge, maybe 18 years.

10:14AM 9 Q. Up until that point, that day, in the conference room,

10:15AM 10 had anything like that ever happened to you in your DEA

10:15AM 11 career?

10:15AM 12 A. Not only my DEA career, but my entire law enforcement

10:15AM 13 career, never. Never.

10:15AM 14 Q. When you left that conference room after the

10:15AM 15 conversation, did you walk down the hallway and report what

10:15AM 16 happened immediately to your supervisor?

10:15AM 17 A. No.

10:15AM 18 Q. Did you eventually report what happened to a DEA

10:15AM 19 supervisor?

10:15AM 20 A. Yes.

10:15AM 21 Q. How long after it happened?

10:15AM 22 A. So that was the summer of 2016. It was almost -- almost

10:15AM 23 two years.

10:15AM 24 Q. Did you report it sometime around the summer of 2018?

10:15AM 25 A. Yes.

1 Q. I want you to explain to the jury now why you waited two
2 years to tell a DEA supervisor what Joseph Bongiovanni said
3 to you in the conference room.

4 A. There are numerous reasons. First, walking out of there,
5 being in shock, trying to figure out as horrible as the
6 racist slurs were, was he involved in some coverup of
7 criminal activity. Confusion. How do I handle this?

8 Knowing that if I did report the racist comments, knowing
9 in my experience in law enforcement, sometimes, and it's not
10 uncommon, to get backlash from other agents or officers in
11 the office thinking you're snitching on another agent. Not
12 being trusted by agents again. Even management, even
13 management, the backlash possible for management. Management
14 doesn't want to the have to deal with an internal affairs
15 investigation.

16 And I know it's going right to internal affairs if I say
17 that. I know, I have that knowledge, that if someone says
18 something like that, that is going to go to an internal
19 affairs investigation.

20 So, as horrible as that is to say, it was almost for
21 myself, knowing that the repercussions of that for me.

22 Q. Were you worried about being ostracized in an office that
23 you had just gotten assigned to?

24 A. Yeah, and I had just gotten back to Buffalo, I hadn't
25 even been there a year. And it took two years of working in

1 New York to even get there. And I'm thinking I'm here eight
2 months, and all of a sudden I'm gonna be in the middle of
3 this mess. And I didn't know how to handle it, and I didn't
4 report it to the supervisor.

5 Q. Did you do the right thing?

6 A. That is not the right way to handle that.

7 Q. Looking back, in hind sight now, should you have gone to
8 a supervisor and reported it immediately?

9 A. Yes. I should have went through my chain of command and
10 reported that immediately.

11 There was also concern that he was gonna tell Gerace that
12 I was investigating him. That was a large part of it.

13 Through my whole time -- when I was in there in that
14 office with him and coming out, it was clear in my head at
15 the forefront of it was he's just gonna tell Gerace.

16 Q. Let's stay on that topic for a second.

17 After that conversation in the conference room with
18 Special Agent Bongiovanni, do you receive an out of the blue,
19 unexpected contact from Peter Gerace?

20 A. Short time after that, I believe it was a couple weeks, I
21 received a phone call.

22 Q. Describe that for the jury.

23 A. I was not at work, I was at home. I don't remember if it
24 was a weekend. I got a call on my personal cell phone, not
25 my work cell phone, and it was a 716 number. I didn't

10:18AM 1 recognize the number, but figured if it was 716 number and
10:18AM 2 it's calling the Vegas number, it's probably someone I know.

10:18AM 3 And I answered it. And the person on the other end said
10:18AM 4 that they just saw a friend of mine, I think that they were
10:18AM 5 in Ellicottville and they just saw a friend. And I had no
10:19AM 6 idea who was on the other end saying this.

10:19AM 7 Q. Okay. Who was the person that called you?

10:19AM 8 A. I said, who is this? He said, it's Gerace.

10:19AM 9 Q. Did you have the person's phone number saved?

10:19AM 10 A. No.

10:19AM 11 Q. Did you recognize the phone number when it called you?

10:19AM 12 A. No.

10:19AM 13 Q. Had you ever spoken to Peter Gerace on the phone before
10:19AM 14 that?

10:19AM 15 A. Peter Gerace has never called me in my entire life up
10:19AM 16 until that point.

10:19AM 17 Q. Up until just a couple weeks after this conversation with
10:19AM 18 Bongiovanni?

10:19AM 19 A. Yes. Ever.

10:19AM 20 Q. The person that Gerace was telling you on the phone that
10:19AM 21 he saw in Ellicottville, was that person someone you knew or
10:19AM 22 were friends with?

10:19AM 23 A. The person he was talking about was a close friend of
10:19AM 24 mine that I didn't even know he knew.

10:19AM 25 Q. Do you know how Peter Gerace got your phone number?

1 A. Yes.

2 Q. Can you describe that for the jury.

3 A. Yes. So, when I worked in New York City, I would come
4 home back to Buffalo where my family was, where our house is,
5 as frequent as I could.

6 On one of those trips home, I was still actually just
7 pulling into Buffalo after driving for six hours, it was late
8 at night -- not late, but probably about around 9:00 -- I
9 told my wife that I was going to stop at Brennan's Pub on
10 Transit to get some chicken wings before I came home.

11 Q. Let me pause you right there. Just give us a time frame.
12 You mentioned this is before you came back to Buffalo. Would
13 this have been -- what year, you think?

14 A. So I was in New York City from December '13, so probably
15 would have been somewhere around 2013, '14.

16 Q. Okay.

17 A. '14, probably 2014.

18 Q. Was 2014 about two years earlier than you initiated this
19 investigation into Gerace?

20 A. Yes.

21 Q. Okay. All right. Continue with the -- the how Gerace
22 got your phone number.

23 A. So, I told my wife I was gonna go to Brennan's to get
24 chicken wings for my dinner, it was late.

25 She mentioned that her brother was already up there. So

1 her brother had moved from Las Vegas back to Buffalo at some
2 point while I was in New York City. And he said -- she said
3 that her brother was up at Brennan's with another friend.

4 And I said, okay. Well, I'm going there for wings. And
5 that's what I did. I went to Brennan's. And when I walked
6 in, I did see her brother, he was there with another friend
7 of his who I know, as well, from growing up in Kenmore.

8 And while I was there eating my chicken wings, Gerace
9 showed up and walked in.

10 Q. How did he get your phone number as a result of that?

11 A. So, when he walked in, which was unexpected to me,
12 because while I was with my wife's brother and the other
13 friend, they never said that Gerace was gonna be showing up.
14 So when he did show up, I was, number 1, surprised, number 2,
15 I was pissed off at her brother that he didn't mention it
16 because he knew I didn't want to be around Peter Gerace, I
17 wouldn't associate with someone like Peter Gerace.

18 But, anyways, I'm in this situation. I saw Gerace. We
19 said hi. I continued to eat my wings, finish my wings. I
20 was probably there for maybe, I don't know, another 20
21 minutes. While I was there, my wife called to ask where I
22 was, when I was coming home.

23 I said that I'd be coming home shortly, that I was there
24 with her brother finishing my wings. And when I hung up the
25 phone, Gerace asked me for my cell phone number. And I gave

1 it to him.

2 I couldn't think of a reason not to. He caught me off

3 guard. It was my personal cell phone, so I gave him my cell

4 phone number.

5 Q. Did you go to Brennan's that night planning to meet your

6 wife's brother?

7 A. No. No.

8 Q. Did you go to Brennan's that night planning to meet this

9 defendant?

10 A. No.

11 Q. Okay. From that time in 2014 when you provided your cell

12 phone number to the defendant, until the conversation that

13 you had with Bongiovanni in the conference room, did Gerace

14 ever reach out to you and call you on the phone?

15 A. He never called me on the phone.

16 Q. Did he ever text you?

17 A. He did text me once after I gave him the cell phone

18 number.

19 Q. Describe that for me.

20 A. I believe it was, again, in 2014, I was actually home

21 again. It was during -- I think it was 2014, there was a bad

22 storm. I was home, I didn't have to go back to work for a

23 few days, I was actually shoveling snow. And I got a text

24 message. It was from a 716 number, didn't recognize it. And

25 it said something like, hey, special agent, how's everything

10:23AM 1 going in New York?

10:23AM 2 And I texted back, who is this?

10:23AM 3 And he said, it's Gerace.

10:24AM 4 And I said, oh, things are good, Peter. Things are fine.

10:24AM 5 I don't remember what I -- Peter, or Gerace -- yeah, Peter.

10:24AM 6 I wouldn't have wrote Gerace. Things are fine.

10:24AM 7 He asked how things were with my family.

10:24AM 8 I said, things are fine with my family. Hope you're

10:24AM 9 doing well. And that was it.

10:24AM 10 Q. Did you carry on months long of text message

10:24AM 11 conversations with him?

10:24AM 12 A. No. No. And, again, caught off guard, shocked. I

10:24AM 13 remember going upstairs saying, it's weird, Gerace just

10:24AM 14 texted me.

10:24AM 15 And my wife was kind of, not approving of that, why would

10:24AM 16 he text you? And that was really it at the time.

10:24AM 17 Q. All right. At any point in your whole life, have you

10:24AM 18 been friends with this defendant?

10:24AM 19 A. No.

10:24AM 20 Q. Did you socialize together?

10:24AM 21 A. Never hung out, never went to each other's houses, never

10:24AM 22 called each other, never socialized. No.

10:24AM 23 Q. Can you describe for this jury the context of how you

10:25AM 24 ultimately reported to a DEA supervisor the comments that

10:25AM 25 Bongiovanni made to you in the conference room?

1 A. Explain when that happened?

2 Q. Explain how it happened, yep.

3 A. So I was requested to go over to the U.S. Attorney's

4 Office for a meeting. And I can't remember if they requested

5 for my supervisor to go, but my supervisor did go with me.

6 So me and my supervisor at the time, and I'm in a different

7 group now, not the one from when I was in the group with

8 Bongiovanni, but the task force group. We both went over to

9 the U.S. Attorney's Office.

10 And while we were at the U.S. Attorney's Office, it was

11 brought to my attention that they had found a report where a

12 girl was found in a parking lot outside of Pharaoh's.

13 **MR. FOTI:** Objection.

14 **THE COURT:** Yeah, sustained.

15 **BY MR. COOPER:**

16 Q. I'm going to ask you some specific questions to try to

17 just tighten up the area that we're covering here.

18 First of all, after that conversation in the conference

19 room with Bongiovanni, did that kind of grind to a halt your

20 investigation into Peter Gerace?

21 A. The -- the only thing that really progressed initially

22 and after that conversation in the conference room was

23 several things with Anthony Gerace that were brought to my

24 attention, him being a marijuana trafficker.

25 Q. Okay. So I'm not asking about things that were brought

1 to your attention.

2 Did you continue after that conversation with Bongiovanni
3 to actively pursue an investigation of Peter Gerace, or did
4 that conversation kind of beat you back a little bit?

5 A. It slowed things down tremendously.

6 Q. Okay. 'Cuz now we're talking about two years later, I'm
7 asking you about how things get brought to the attention of
8 your supervisor.

9 A. Right.

10 Q. Is that the summer of 2018?

11 A. Yes.

12 Q. Okay. And are you made aware that the U.S. Attorney's
13 Office is -- is looking for information relating to Peter and
14 Anthony Gerace?

15 A. Yes, I was made aware of that.

16 Q. Okay. After you were made aware of that, did you
17 participate in some proffers that were going on with the U.S.
18 Attorney's Office and other law enforcement agencies?

19 A. I did participate in a proffer with --

20 Q. Okay. Just --

21 A. Yes.

22 Q. Yep. Were you informed by the U.S. Attorney's Office to
23 look back for historical reporting information regarding
24 Peter or Anthony Gerace?

25 A. Yes.

10:27AM 1 Q. Okay. Does that mean go back and look back for old
10:27AM 2 reports in your DEA computer system?

10:27AM 3 A. Pretty much. Pretty much, yep.

10:27AM 4 Q. Were you the only law enforcement agency that was
10:27AM 5 participating at that point with the U.S. Attorney's Office?

10:27AM 6 A. No.

10:27AM 7 Q. Okay. Did you go back and do your part at the DEA to
10:27AM 8 look for historical reporting information on Gerace?

10:27AM 9 A. Yes.

10:27AM 10 Q. Did you find a report related to Gerace from back in 2008
10:27AM 11 or '9?

10:27AM 12 A. I did.

10:27AM 13 Q. Okay. Was that your report?

10:27AM 14 A. No. It wasn't a report that I wrote.

10:28AM 15 Q. Where were you in 2009?

10:28AM 16 A. In 2009, I was in Las Vegas.

10:28AM 17 Q. Okay.

10:28AM 18 A. Still.

10:28AM 19 Q. Whose report was it that you encountered?

10:28AM 20 A. It was a report written by Joseph Bongiovanni.

10:28AM 21 Q. Did you provide that report to the U.S. Attorney's
10:28AM 22 Office?

10:28AM 23 A. Yes.

10:28AM 24 Q. Why?

10:28AM 25 A. Because I was requested to see if there were any

1 historical reports, reports of investigation by DEA, on
2 either Peter or Anthony Gerace.

3 Q. Did you review the contents of the report that
4 Bongiovanni drafted regarding Gerace?

5 A. Yes, I did.

6 Q. What was your impression of that report given what you
7 had learned over the course of -- of several years leading up
8 to 2018?

9 A. That that was a fake report, and he was lying, calling--

10 **MR. FOTI:** Objection.

11 **THE COURT:** Overruled.

12 **BY MR. COOPER:**

13 Q. Go ahead.

14 A. -- and that he was lying, calling Peter Gerace his
15 informant.

16 Q. When you looked at it, when you laid eyes on it for the
17 first time, were alarm bells going off in your head?

18 A. I knew immediately when I read it. Immediately.

19 Q. You called it a fake report. What do you mean by that?

20 A. Fake in the sense that he was lying in the report.

21 **MR. FOTI:** Objection.

22 **THE COURT:** Overruled.

23 **BY MR. COOPER:**

24 Q. Go ahead.

25 A. He was lying in the report. He was calling a friend of

1 his his informant. He named him by name in the narrative
2 section of a DEA report, which you never do, you only do it
3 by a number. The report wasn't indexed properly. There were
4 several things that were wrong about the report.

5 **MR. COOPER:** Just give me one second. I'd like to
6 pull up what's in evidence as Government Exhibit 30A.

7 **BY MR. COOPER:**

8 Q. Can you see this on your screen, sir?

9 A. Yes.

10 Q. Do you recognize it?

11 A. Just give me one moment, please. Yes.

12 Q. Is this the fake report that you were referencing a
13 minute ago?

14 A. Yes.

15 Q. When Bongiovanni spoke with you in the conference room in
16 2016, did he say, hey, Tony, don't investigate Peter Gerace,
17 he's my confidential source?

18 A. No.

19 Q. Did he say, hey, Tony, don't investigate Peter Gerace,
20 he's my source of information?

21 A. No.

22 Q. Did he tell you, hey, Peter Gerace, he's provided
23 information in other narcotics investigations, let's work on
24 it together?

25 A. No.

1 Q. None of that?

2 A. No.

3 Q. When you provided this report, Government Exhibit 30A, to
4 the U.S. Attorney's Office, can you describe for the jury how
5 that led to you disclosing the information about the
6 conversation in the conference room in 2016.

7 A. Could you explain that again?

8 Q. Sure.

9 **MR. COOPER:** Actually, I'm gonna just ask for one
10 second, Judge, to try to make sure that we keep an answer
11 tight.

12 **THE COURT:** Fine.

13 **MR. COOPER:** Thank you.

14 **BY MR. COOPER:**

15 Q. We're gonna try to walk through it chronologically here.

16 After you sent that report to the U.S. Attorney's Office,
17 did Bongiovanni ever come and approach you about that?

18 A. Yes, he did.

19 Q. Describe that confrontation.

20 A. My partner at the time, Dave Davidzik, who was still
21 working in group D-57, he was a task force agent, he was from
22 Customs and Border Protection, CBP. We were partners
23 together in D-57. He gave me a heads-up, because he was
24 still working on things related to Gerace while he was in his
25 group.

1 And he said, just to give you a heads-up, Greg, meaning
2 the supervisor, in that group, asked Dave Davidzik why I was
3 over there, and Dave said he told him because Tony found a
4 report where Bongiovanni is calling Gerace his informant.

5 And my old partner told me that Greg had told Bongiovanni
6 that I sent that report to the U.S. Attorney's Office.

7 Q. So my question is, did Bongiovanni come and confront you
8 about it?

9 A. So because of that, shortly thereafter, I think it was
10 the same day, Bongiovanni confronted me at my desk.

11 Q. What was his demeanor like when that happened?

12 A. He was angry again.

13 Q. What did he say to you?

14 A. He said, what is this? That you sent this bullshit
15 report that I sent to the U.S. Attorney's Office, and wrote
16 years ago, over to the U.S. Attorney's Office.

17 Q. Was he angry? Did he appear angry to you that you had
18 provided one of his reports to the U.S. Attorney's Office?

19 A. He was definitely angry and rattled.

20 Q. Okay. Does the DEA work hand in hand with the U.S.
21 Attorney's Office?

22 A. All of the time.

23 Q. Is there anything strange or unusual about a DEA special
24 agent sending a DEA report of investigation to a federal
25 prosecutor's office?

10:33AM 1 A. No, we do it all the time.

10:33AM 2 Q. I'm going to ask you some specific questions now,
10:34AM 3 Mr. Casullo.

10:34AM 4 In July of 2018, were you at a proffer with an individual
10:34AM 5 named Ron Serio?

10:34AM 6 A. Yes.

10:34AM 7 Q. Had Mr. Serio been arrested?

10:34AM 8 A. Yes.

10:34AM 9 Q. Was it your understanding that he was arrested by the
10:34AM 10 Erie County Sheriff's Office and the FBI Safe Streets Task
10:34AM 11 Force?

10:34AM 12 A. Yes.

10:34AM 13 Q. That was not a DEA investigation; is that correct?

10:34AM 14 A. No.

10:34AM 15 Q. Did the U.S. Attorney's Office set up that proffer
10:34AM 16 meeting with Mr. Serio?

10:34AM 17 A. Yes, they did, they set that up for us.

10:34AM 18 Q. Okay. And did the prosecutors tell you or invite you to
10:34AM 19 join that proffer?

10:34AM 20 A. Yes. We actually requested it to have it set up in the
10:34AM 21 U.S. Attorney's Office, set that up for us.

10:34AM 22 Q. Okay. Did you ever get a chance -- actually, withdrawn.
10:34AM 23 After that proffer, did you attend that actual proffer?

10:34AM 24 A. I did.

10:34AM 25 Q. Okay. After that proffer, did you learn that you could

10:35AM 1 no longer be a case agent investigating Gerace or Serio?

10:35AM 2 A. At some point after that, yes.

10:35AM 3 Q. Okay. I just want to try to nail down the timeframe

10:35AM 4 here. That proffer, would that have been around July 20th of

10:36AM 5 2018?

10:36AM 6 A. Yeah.

10:36AM 7 Q. Okay. And after that proffer, approximately two weeks

10:36AM 8 later, in early August of 2018, did you attend a meeting with

10:36AM 9 the U.S. Attorney's Office?

10:36AM 10 A. Yes.

10:36AM 11 Q. Who were you there with?

10:36AM 12 A. My supervisor, Jim McHugh.

10:36AM 13 Q. Okay. During that Serio proffer, without getting into

10:36AM 14 anything specifically that was said, did Bongiovanni's name

10:36AM 15 come up during the Serio proffer?

10:36AM 16 A. Yes.

10:36AM 17 Q. Okay. And did his name come up in a way that made him,

10:36AM 18 in your view, a possible subject of an investigation?

10:36AM 19 A. Yes.

10:36AM 20 Q. As a result of that, did you attend a meeting on

10:36AM 21 August 1st of 2018 with the U.S. Attorney's Office and Jim

10:36AM 22 McHugh as you described a moment ago?

10:36AM 23 A. Yes.

10:36AM 24 Q. During that meeting, did you report what had happened

10:36AM 25 back in July of 2016?

1 A. That's when I reported the things that Joe said regarding
2 the racial slurs.

3 Q. Was that the first time that you had officially reported
4 it to your chain of command?

5 A. To my chain of command, yes.

6 Q. Had you told anyone else about it before that?

7 A. Oh, I told several close friends shortly after it
8 happened, what he had said to me, agents that I trusted with
9 my life, one being my field training agent that worked in
10 Miami, another being an ex-supervisor in Washington, D.C. A
11 couple agents in the office that were close friends of mine,
12 one that I worked in with in New York. Just a handful of
13 very close people.

14 Q. Was this conversation in early August of 2018 the first
15 time that you reported it to a supervisor in the Buffalo
16 resident office?

17 A. Yes.

18 Q. Were you instructed at that point during that August 1st,
19 2018 meeting, that you were going to be essentially walled
20 off from investigations into Bongiovanni or Gerace?

21 A. I was told by my office, my resident agent in charge, Ed
22 Orgon, shortly after that, that I was no longer to work the
23 Gerace investigation.

24 **MR. COOPER:** You can take 30A down please,
25 Ms. Champoux.

1 BY MR. COOPER:

2 Q. The last topic that I want to cover with you is something

3 called DARTS. Are you familiar with that?

4 A. Yes.

5 Q. Can you explain to the jury, I don't think we've spent

6 time on this yet, what is DARTS?

7 A. So DARTS is a deconfliction system, a DEA deconfliction

8 system. Meaning that you can query -- you can input phone

9 numbers into this system, along with email addresses, serial

0 numbers from telephones, but mainly it's for telephone

1 numbers. You can input it into the system to see if other --

2 other agencies or other agents are looking at the same

3 telephone numbers, looking at possibly the same targets.

4 Q. Does DEA have offices all across the United States of

5 America?

6 A. Oh, not the just U.S., but globally as well.

7 Q. Okay. And do drug traffickers also function across state

8 lines and across country borders?

9 A. Globally, nationally, yes.

0 Q. So, does this DARTS deconfliction system allow an agent

1 in a local office like the Buffalo resident office to see if

2 a specific phone number has come up in other areas like

3 Los Angeles, or Honolulu, or anything like that?

4 A. All the time.

5 Q. Okay. And is that a very common system that's used by

10:39AM 1 DEA special agents?

10:39AM 2 A. I used it daily.

10:39AM 3 Q. If you were looking into a suspected drug trafficker's

10:39AM 4 phone number, would it be standard practice to put that

10:40AM 5 number into DARTS?

10:40AM 6 A. It should be.

10:40AM 7 Q. Okay. At DEA, were you allowed to investigate people

10:40AM 8 that you were friends with?

10:40AM 9 A. No.

10:40AM 10 Q. Okay. So if you had a close personal friendship with

10:40AM 11 someone, could you be the lead case agent investigating them?

10:40AM 12 A. No.

10:40AM 13 Q. How about their family members?

10:40AM 14 A. No.

10:40AM 15 Q. Why not?

10:40AM 16 A. There'd be a conflict of interest. There would always be

10:40AM 17 a risk of being put in a situation as an agent of being

10:40AM 18 compromised, possibly.

10:40AM 19 Q. Is DARTS a law enforcement tool?

10:40AM 20 A. It's a -- DARTS is a law -- DEA law enforcement system.

10:40AM 21 Q. Okay. Are you supposed to use it for law enforcement

10:40AM 22 purposes?

10:40AM 23 A. Official purposes only. There's actually a warning when

10:40AM 24 you log on every time stating that.

10:40AM 25 Q. So could you just run your wife's phone number in DARTS

1 for kicks, you know, kicks and giggles or not?

2 A. Oh, no. No. You could get in a lot of trouble for that.

3 Probably fired, actually.

4 Q. Now, if you uploaded a certain number, let's say John

5 Smith, you put John Smith's phone number in DARTS. If

6 another agent in a different office had already uploaded that

7 number into DARTS, explain to the jury what would happen.

8 A. So, if somebody else had already put a number in the

9 system, and then you query the number, it's called a hit,

10 meaning that it finds that number already in the system and

11 it sends an email back to the email account of you as the one

12 who just put it in. And it also sends an email to the other

13 person that put it in previously. And it kind of alerts both

14 sides that, hey, there's an overlap here in an investigation.

15 The email will typically contain the case number for both

16 the case that was put in initially and your case. If they're

17 both DEA agents looking at the same number, there will be a

18 little remarks section where you can view comments, it will

19 also say the agent's name or the DEA analyst's name that

20 initially put the number in, and a contact number. So, both

21 sides are seeing the same thing.

22 Q. Are those DARTS deconfliction emails automatically

23 generated by the computer system?

24 A. Yes.

25 **MR. COOPER:** For the witness only, Ms. Champoux, can

1 we pull up Government Exhibit 26B, as in bravo?

2 **BY MR. COOPER:**

3 Q. Can you just -- can you see that, Tony?

4 A. Yes.

5 **MR. COOPER:** Can you scroll through, Ms. Champoux, to
6 the next page? And then the next page.

7 **BY MR. COOPER:**

8 Q. Do you recognize this three-page document, sir?

9 A. Yes, I do.

10 Q. What do you recognize this three-page document to be?

11 A. This is a DARTS deconfliction.

12 Q. Okay. And is it a DARTS deconfliction that involved a
13 phone number that you input into DARTS at some point during
14 your DEA career?

15 A. Yes.

16 Q. Okay. So were you a party essentially to this
17 deconfliction notice?

18 A. So looking at this, this is the notice from -- I put the
19 number into the system, and when I put the number into the
20 system, it generated the response back finding an overlap and
21 showing me what the overlaps are. It's one of those emails I
22 described that I receive if it hit on a phone number.

23 Q. I'm going to ask you some specific questions now, just
24 give me one second.

25 Are DARTS deconfliction notices a DEA official record?

10:44AM 1 A. Yes.

10:44AM 2 Q. Okay. Are they made at or near the time that a DARTS
10:44AM 3 entry is made by an agent or an analyst?

10:44AM 4 A. It's immediate.

10:44AM 5 Q. Okay. Is that record, a DARTS deconfliction, kept in the
10:44AM 6 ordinary course of DEA business?

10:44AM 7 A. Yes. In an investigative file, yes.

10:44AM 8 Q. Okay. Is the DEA under a duty to make that record in the
10:44AM 9 regular practice of their activity?

10:44AM 10 A. Oh, daily.

10:44AM 11 Q. Okay.

10:44AM 12 **MR. COOPER:** With that foundation, I'd offer
10:44AM 13 Government Exhibit 26B into evidence.

10:44AM 14 **MR. FOTI:** Objection, Judge.

10:44AM 15 **THE COURT:** Basis?

10:44AM 16 **MR. FOTI:** Hearsay.

10:44AM 17 **THE COURT:** Overruled.

10:44AM 18 **(GOV Exhibit 26B was received in evidence.)**

10:44AM 19 **MR. COOPER:** Go to page 1, please, Ms. Champoux.
10:44AM 20 Thank you, ma'am.

10:44AM 21 **BY MR. COOPER:**

10:44AM 22 Q. So this is a three-page document, it's the first one
10:45AM 23 we're looking at, so I just want to orient everybody.

10:45AM 24 At the top here, I just highlighted a section. What are
10:45AM 25 we looking at at the top here?

1 A. The top, the "from" is who put the number in to generate
2 this deconfliction. The date and time that that was done.
3 And then the "to" is the overlap that I spoke about. So
4 anybody else that had that number in the system, that's where
5 the "to" should send up.

6 Because it's basically saying I put the number in, so
7 it's from me. And it's sending this deconfliction that I
8 generated out to the rest of those people.

9 Q. Got it. Earlier I asked you if these DARTS deconfliction
10 emails were auto-generated, and you said yes; is that right?

11 A. Correct.

12 Q. Where it says here that the email is from you, would it
13 be fair to say you didn't actually sit down and type this
14 email yourself?

15 A. No. Like you said, it's auto-generated.

16 Q. Okay. But because you're the person who entered the
17 phone number into DARTS, does it appear that it's coming from
18 you?

19 A. Correct. When I log into the system, it automatically
20 has me as the person.

21 Q. Okay. "To." Does that list the people or the parties
22 that have investigative overlap with the number that you put
23 in?

24 A. Yes.

25 Q. Okay. Do you see this email address that I just circled

10:46AM 1 there?

10:46AM 2 A. I do.

10:46AM 3 Q. Who's that?

10:46AM 4 A. Joseph Bongiovanni.

10:46AM 5 Q. Is he one of the people that had investigative overlap
10:46AM 6 with the number that you put in?

10:46AM 7 A. Yes.

10:46AM 8 Q. Okay.

10:46AM 9 **MR. COOPER:** And then, Ms. Champoux, if we can zoom
10:46AM 10 in on the bottom portion of the page here, please?

10:46AM 11 **BY MR. COOPER:**

10:46AM 12 Q. What are we looking at here, sir? Just, like, orient us
10:46AM 13 to what's on the page.

10:46AM 14 A. So, again, at the top, the "to" is who's receiving the
10:47AM 15 overlap. So the other people that had that number in the
10:47AM 16 system before me. The "from," meaning me, and then the
10:47AM 17 details that I put it in on that date and time, and my case
10:47AM 18 number, and then contact number and email. Yep.

10:47AM 19 Q. So up here in bold, is this your name and contact
10:47AM 20 information?

10:47AM 21 A. Yes.

10:47AM 22 Q. And it lists the case number you were working on?

10:47AM 23 A. Yes.

10:47AM 24 **MR. COOPER:** You can zoom out of that, please. And
10:47AM 25 then scroll to the next page, please. All right.

1 Let's now zoom in, Ms. Champoux, on that next section
2 right there.

3 **BY MR. COOPER:**

4 Q. All right. Special Agent Casullo, we're on page 2, and
5 we've zoomed in on the top half essentially of the page. Is
6 this what the actual deconfliction itself looks like?

7 A. Yes.

8 Q. Where it says Trinity item, and then lists a phone
9 number, what is that? What is that phone number?

10 A. That's the number that I would have put into the system.
11 So that's the number I'm querying.

12 Q. Okay. Can you see your query or your entry into DARTS
13 listed underneath that phone number ending in 5553?

14 A. Yes.

15 Q. When did you make your entry?

16 A. August 2nd, 2018.

17 Q. What was the remarks section for your entry?

18 A. Numbers in contact with marijuana trafficker Anthony
19 Gerace.

20 Q. Is that the brother of Peter Gerace?

21 A. Yes.

22 Q. Was there an investigative overlap with a case that
23 Special Agent Bongiovanni was purported to be working on?

24 A. Yes.

25 Q. When was that entry made?

1 A. That was made March 20th, 2013.

2 Q. Okay. And what was the remarks section for Bongiovanni's
3 investigation?

4 A. Number part of ongoing narcotics investigation in contact
5 with target number 716-578-5296 per S.A. Bongiovanni.

6 **MR. COOPER:** You can zoom out of that please,
7 Ms. Champoux. And scroll to the next page.

8 **BY MR. COOPER:**

9 Q. Are these additional -- each of these Trinity items, are
10 they additional phone numbers that you were running?

11 A. Yeah, that was the same batch. I running numerous
12 numbers, I call them batches, meaning you're running, say, 20
13 numbers at a time, 15 numbers at a time. So it's the same
14 query.

15 Q. Got it.

16 **MR. COOPER:** We can take that down, Ms. Champoux.
17 Judge, would we be able to take a morning break? Is
18 it too early for that, or --

19 **THE COURT:** No, we can take a break now.

20 **MR. COOPER:** Okay, thank you.

21 **THE COURT:** Okay, folks, let's take our morning break
22 now. So remember my instructions, don't talk with anybody
23 about the case, including each other. Don't make up your
24 mind.

25 See you back here in about 15 minutes or so.

10:50AM 1 (Jury excused at 10:50 a.m.)

10:50AM 2 **THE COURT:** Anything for the record from the defense?

10:50AM 3 **MR. SOEHNLEIN:** No, thank you, Judge.

10:50AM 4 **THE COURT:** From the government?

10:50AM 5 **MS. CHALBECK:** No, Judge.

10:50AM 6 **THE COURT:** Thank you very much. See you in a few

10:51AM 7 minutes.

10:51AM 8 **THE CLERK:** All rise.

10:51AM 9 (Off the record at 10:51 a.m.)

11:11AM 10 (Back on the record at 11:11 a.m.)

11:11AM 11 (Jury not present.)

11:11AM 12 **THE CLERK:** All rise.

11:11AM 13 **THE COURT:** Please be seated.

11:11AM 14 **THE CLERK:** We are back on the record for the

11:11AM 15 continuation of the jury trial in case number 19-cr-227 and

11:11AM 16 23-cr-37, United States of America versus Peter Gerace, Jr.

11:11AM 17 All counsel and parties are present.

11:11AM 18 **THE COURT:** Okay. Anything for the record?

11:11AM 19 **MR. COOPER:** No, thank you.

11:11AM 20 **THE COURT:** You're welcome.

11:11AM 21 Anything for the record?

11:11AM 22 **MR. FOTI:** No, Judge.

11:11AM 23 **THE COURT:** Okay. Can we get the witness back in?

11:11AM 24 And let's get the jury back in, please.

11:11AM 25 Are you okay?

11:11AM 1 **MR. COOPER:** Yeah, thank you.

11:13AM 2 (Jury seated at 11:13 a.m.)

11:13AM 3 **THE COURT:** The record will reflect that all our
11:13AM 4 jurors again are present.

11:13AM 5 I remind the witness that he's still under oath.

11:13AM 6 You may continue, Mr. Cooper.

11:13AM 7 **MR. COOPER:** Thank you, Judge.

11:13AM 8 **BY MR. COOPER:**

11:13AM 9 Q. Sir, we left off talking about DARTS deconfliction
11:13AM 10 notices, and we looked at 26B, as in bravo, which we moved
11:13AM 11 in. That was from August of 2018.

11:13AM 12 Did there come a time later in early 2019, when you
11:13AM 13 again -- or, excuse me, when you acquired phone records for
11:13AM 14 an individual named Anthony Gerace?

11:13AM 15 A. What timeframe?

11:13AM 16 Q. In early 2019.

11:13AM 17 A. I'd have to -- I'd have to see it.

11:13AM 18 Q. Okay. Do you recall a burglary occurring at a person
11:13AM 19 named Michael Sinatra's house?

11:13AM 20 A. Yes.

11:13AM 21 Q. In relation to that event, did you acquire Anthony
11:13AM 22 Gerace's phone records?

11:13AM 23 A. Yes, I did.

11:13AM 24 Q. Okay. And so, if that burglary happened New Year's Eve
11:13AM 25 of 2018, December 31st of '18, would you have gotten Gerace's

1 phone records sometime shortly after that?

2 A. Yes.

3 Q. Okay. After you subpoenaed Anthony Gerace's phone

4 records, did you put his number into DARTS again?

5 A. Yes.

6 Q. Okay. Upon inputting Anthony Gerace's phone number into

7 DARTS in early 2019, did Bongiovanni approach you?

8 A. Yes.

9 Q. What was his demeanor like when he approached you?

10 A. I remember he came over to my side of the office, because
11 I was in his task force group now, he didn't come directly to
12 my desk. I believe at the time a Homeland Security agent, my
13 partner, Curtis Ryan, was at my desk.

14 So he came in, looked towards my desk, then he went into
15 the office where the secretaries were, walked around a bit.
16 Appeared to wait for Curtis Ryan to leave, and then came over
17 to my desk.

18 Q. When he came over to your desk, what happened?

19 A. He said that he saw that I was running phone records on
20 Anthony Gerace.

21 Q. Did he say anything else about you running phone records
22 on Anthony Gerace?

23 A. Yes. Yeah. He said that he saw the deconfliction, that
24 he received the deconfliction. I don't know the exact words
25 that he used, but he saw that I was running the toll records.

1 That his wife was friends with Anthony Gerace and his friends
2 on Facebook. And that he, Joe, couldn't help in the
3 investigation but he could help through his wife's Facebook
4 account and the friends that she had on Facebook to help me
5 with the investigation.

6 Q. Did he make comments to you about any drug in particular?

7 A. Oh, he did.

8 Q. Tell the jury about that.

9 A. He made a comment during that conversation that I better
10 hurry up and arrest Anthony Gerace before they make marijuana
11 legal.

12 Q. Did that statement indicate to you that Bongiovanni
13 believed that Anthony Gerace was involved in marijuana
14 distribution?

15 A. Based on that comment, he had other comments about other
16 drugs, too.

17 Q. Okay. Describe those.

18 A. Yeah.

19 **MR. FOTI:** I'm going to object.

20 **THE COURT:** What's the basis?

21 **MR. FOTI:** Can we approach?

22 **THE COURT:** Come on up.

23 (Sidebar discussion held on the record.)

24 **THE COURT:** You can't just say object, you've got to
25 give me a -- you've got to give me an objection hearsay,

objection relevance, objection something.

MR. FOTI: Right. I understand, Judge, I'm sorry.

It's a hearsay objection. I understand

Mr. Bongiovanni may -- there may be a finding that he is a

coconspirator, but he's talking about Anthony Gerace. And

he's talking about evidence that supports Anthony Gerace was

actually committing a crime, it's not in furtherance of the

conspiracy.

THE COURT: Yeah. How is this in furtherance of the

conspiracy?

MR. COOPER: This is what Bongiovanni did over and over again with respect to the 2009 FBI. He's getting himself involved, inserting himself. He uses that as a tactic to solicit information from the other law enforcement officer about what they have going on.

You saw this play out, I think, repeatedly.

THE COURT: Well, sure, but that was the Bongiovanni trial.

MR. COOPER: Sure. But I'm just explaining. So the, I guess, the first argument that I was responding to is how is this in furtherance. And the answer is, just because he's forward facing and saying, oh, I can help up through my wife's Facebook, what he's really doing is gaining the trust of that person, and gaining information about what they're doing, what they have. That's the first part.

1 The second part, with respect to it being Anthony
2 Gerace. Anthony Gerace is a coconspirator in the Peter Gerace
3 and Bongiovanni conspiracy. And so, getting involved in Tony
4 Casullo's looking into Anthony's phone records is equally
5 relevant.

6 **THE COURT:** So we've established Anthony Gerace to be
7 a coconspirator in the Bongiovanni and Peter Gerace
8 conspiracy?

9 **MR. TRIPI:** Do you want to -- yeah, Judge. We went
10 through this a little bit at the final pretrial.

11 **THE COURT:** Okay.

12 **MR. TRIPI:** I pulled -- I pulled just our exchange.
13 There are several manner and means, it's only three pages, I
14 just thought it would be helpful to --

15 There are several manner and means that talk about
16 shielding that overlap conspiracies one and two, we talked
17 about this.

18 **THE COURT:** Um-hum.

19 **MR. TRIPI:** We're not representing the whole Serio
20 conspiracy, but there -- there is certain overlap, and Anthony
21 Gerace is key to that.

22 We've already established at this trial so far that
23 Anthony supplies Peter at times with cocaine.

24 You're going to hear testimony later on from Jeffrey
25 Anzalone where he procured cocaine from Anthony and used it

1 inside Pharaoh's.

2 So I think -- it's not like it's some ancillary
3 member. It's also Peter's family member. So brushing back
4 one of the -- one of the key parts of each conspiracy in one
5 in and two, is dissuading fellow members of law enforcement
6 from investigating people that he was protecting.

7 And -- and as it relates to both conspiracies, we
8 submit that there's evidence that Anthony Gerace fits in both
9 of those conspiracies from that perspective.

10 So whether or not Anthony is dealing in marijuana
11 with one and cocaine in the other, he's in both. He's got one
12 foot in each. And so, we're not going to some tertiary member
13 of the Serio conspiracy here and trying to pigeon hole that
14 in.

15 Also, you'll hear testimony from Curtis Ryan that
16 even after the search at Anthony's house where guns, a little
17 bit of cocaine, a little bit of steroids, and a lot of
18 marijuana products are recovered, the directive -- and this
19 came in at two trials -- from Anthony to his girlfriend Lauren
20 was call Peter.

21 So when you put all of that together, I think we have
22 a sufficient basis to --

23 **THE COURT:** The direction --

24 **MR. TRIPI:** The directive of Anthony as he's being
25 walked out in handcuffs to his girlfriend Lauren is "call

1 Peter." So when you put all of that together, that's --
2 obviously, some of that is still to come, I think we're
3 squarely --

4 **MR. COOPER:** Thank you.

5 **MR. FOTI:** First of all, Judge, I think in regard to
6 the last point, it's very common that when somebody's being
7 arrested, they direct a family member to call somebody else
8 who they think will be able to help them secure counsel.

9 **THE COURT:** Of course. But there's other things, so
10 if you took that in the vacuum, if that was the only thing
11 that Mr. Tripi said to me, then I think I undoubtedly would
12 agree with you, but-- but that's not. So, there's other
13 things, too.

14 **MR. FOTI:** So, so, I'll work backwards to the other
15 points, too. Any arguments about regarding whether Anthony is
16 a coconspirator, first of all, as a first preliminary point, I
17 don't think it's been established even on the drug conspiracy,
18 there's anything other than a singular buy-sell. But setting
19 that aside let's say --

20 **THE COURT:** Anthony -- Anthony --

21 **MR. FOTI:** Gerace.

22 **THE COURT:** No, no, I know. But buy-sell, you're
23 talking about the buy-sell between Anthony and Peter?

24 **MR. FOTI:** Yes. There was testimony about a time
25 that Mr. Gerace came home and that Anthony gave him drugs. I

1 think that's really the extent of the proof for the most part.

2 **THE COURT:** For Anthony so far?

3 **MR. FOTI:** Yes.

4 **THE COURT:** Do you agree with that? So far?

5 **MR. COOPER:** So far, yes.

6 **THE COURT:** Okay. Go ahead.

7 **MR. FOTI:** Even so, even if -- even if there was more
8 proof where a coconspirator relationship had been established
9 in regards to the drugs, that does not overlap automatically
10 into a conspiracy involving Mr. Bongiovanni. And it's a
11 conspiracy with Mr. Bongiovanni where the statements would
12 have to be in furtherance -- it's -- it's Mr. Bongiovanni's
13 statements that are at issue here, and the statements are
14 hearsay unless they're in furtherance of a conspiracy. He's
15 talking about Anthony Gerace.

16 **THE COURT:** But Bongiovanni is involved, right?
17 Aren't there two conspiracies? The drug conspiracy and --

18 **MR. TRIPI:** There's a drug conspiracy.

19 **THE COURT:** -- and a conspiracy to defraud the United
20 States.

21 **MR. TRIPI:** Correct.

22 **THE COURT:** And so, those are -- those are two
23 conspiracies.

24 **MR. FOTI:** So I -- I -- okay. So, fair, that's a
25 fair point. So I guess if there was an -- if it was

1 established that this was in furtherance of the drug
2 conspiracy, Mr. Bongiovanni was making these statements about
3 Anthony Gerace in furtherance of the drug conspiracy, then
4 that would be the argument for why it overcomes hearsay.

5 But --

6 **THE COURT:** But there's -- but there's -- the two
7 conspiracies are overlapping in this area, right? It goes --
8 I mean, the conspiracy to defraud the United States and the
9 drug conspiracy, they -- they dovetail.

10 **MR. FOTI:** There's obvious -- yeah, there -- I agree,
11 there is, obviously, they're intertwined in different ways, I
12 understand.

13 **THE COURT:** Yeah.

14 **MR. FOTI:** I understand. However, at the end -- at
15 the end of the day, you're ultimately still looking at a
16 question of if Mr. Bongiovanni's making statements about
17 Anthony Gerace, is that statements in furtherance of a
18 conspiracy with Peter Gerace here, I don't think Anthony
19 Gerace is established as a coconspirator. I just don't --

20 **MR. COOPER:** Judge --

21 **THE COURT:** And I guess that's the question, right?
22 And I -- and I agree, I don't think he's been established as a
23 coconspirator yet, but you're telling me there's stuff that's
24 gonna come in?

25 **MR. TRIPI:** Yeah, with a proffer, all of that.

11:22AM 1 **MR. COOPER:** And, Judge, for example, like for
11:22AM 2 example, Lou Selva is gonna -- I expect is gonna testify that
11:23AM 3 he was informed that Bongiovanni interceded on Anthony
11:23AM 4 Gerace's behalf when he was involved in a drug arrest. It's,
11:23AM 5 there's a -- a --

11:23AM 6 **THE COURT:** How is that involved in the Peter Gerace
11:23AM 7 conspiracy?

11:23AM 8 **MR. COOPER:** I'm struggling right now.

11:23AM 9 **THE COURT:** No, no, that's okay. So --

11:23AM 10 **MR. TRIPI:** So there are -- setting that aside,
11:23AM 11 there's different reasons we think some of those statements
11:23AM 12 come in through Lou Selva. We'll argue that when Lou Selva's
11:23AM 13 up.

11:23AM 14 The -- the key thing we need to remember here is, and
11:23AM 15 I think you were hitting it, Your Honor, the -- the -- you
11:23AM 16 don't have to say which bucket, which conspiracy bucket the
11:23AM 17 statement falls into, both conspiracies coalesce. And here,
11:23AM 18 you have Anthony supplying cocaine to Gerace on an occasion,
11:24AM 19 or he supplies it to a dancer and we're proffering under
11:24AM 20 104 -- and I think it's Bourjaily, right -- that you're going
11:24AM 21 to hear more testimony from -- from Jeff Anzalone who's
11:24AM 22 testified twice about Anthony distributing drugs to him inside
11:24AM 23 Pharaoh's and using drugs and setting him up --

11:24AM 24 **THE COURT:** Inside Pharaoh's?

11:24AM 25 **MR. TRIPI:** Yeah, inside Pharaoh's.

11:24AM 1 **THE COURT:** Okay. Then I'm --

11:24AM 2 **MR. TRIPI:** Using drugs together, there's the
11:24AM 3 maintaining the drug premises part.

11:24AM 4 And when the relationship is one of brothers who are
11:24AM 5 involved together --

11:24AM 6 **THE COURT:** No, I agree with that. I agree that
11:24AM 7 there's another level there because they are brothers. But,
11:24AM 8 but so I will allow it, separate to the -- based on the
11:24AM 9 government's proffer, and assuming that the Jeff Anzalone
11:24AM 10 testimony comes in as Mr. Tripi says that it will.

11:24AM 11 **MR. TRIPI:** And it has come in in two trials. So if
11:24AM 12 he does a 180, it's been in both trials.

11:24AM 13 **THE COURT:** I understand. You certainly have a
11:24AM 14 good-faith basis. But if it doesn't come in, then we'll jump
11:24AM 15 off that bridge when we come to it. Okay?

11:25AM 16 (End of sidebar discussion.)

11:25AM 17 **THE COURT:** The objection is overruled. You may
11:25AM 18 continue.

11:25AM 19 **BY MR. COOPER:**

11:25AM 20 Q. We left off with you explaining that Bongiovanni made
11:25AM 21 statements to you about Anthony Gerace being involved in
11:25AM 22 other drugs; is that right?

11:25AM 23 A. Correct.

11:25AM 24 Q. Can you explain what he said?

11:25AM 25 A. So before he said that about you better hurry up before

1 they make marijuana legal, he had said that -- that he knew
2 that Anthony Gerace, excuse me, had loads of marijuana
3 delivered to him behind the restaurant, Salvatore's
4 restaurant on Transit, I believe. That he also sold cocaine
5 to his friends. And then, but you better hurry up and arrest
6 him before they make marijuana legal.

7 Q. Was it your impression during that conversation with
8 Bongiovanni that he was attempting to minimize Anthony
9 Gerace's illegal activity?

10 A. I perceived it as almost mocking me for working a
11 marijuana investigation. And number 2, that it wasn't even
12 worth investigating.

13 No one, again, no one has ever said that to me in my
14 entire law enforcement career about marijuana.

15 Q. Okay. Did you leave that conversation with Bongiovanni
16 with the impression that he was attempting to dissuade you
17 from investigating Anthony Gerace?

18 A. Absolutely. And his way, his -- in my opinion, his --
19 yes.

20 **MR. COOPER:** Just one second, please, Judge.

21 No further direct, Judge, thank you.

22 **THE COURT:** Cross-examination?

23 **MR. FOTI:** Yes, Judge.

24
25

CROSS-EXAMINATION BY MR. FOTI:

Q. Good morning.

A. Good morning.

Q. Sir, when did you first meet Peter Gerace?

A. In freshman year of high school, 1981.

Q. Okay. You didn't meet him before going to Saint Joe's?

A. No.

Q. And when I say "Saint Joe's," sometimes I forget there's

jurors from all over the place here, so we're talking about

Saint Joseph's Collegiate Institute, right?

A. Yes.

Q. Okay. That's the high school you talked about attending

during your direct-examination, correct?

A. Correct.

Q. And because, you know, some of us know it as Saint Joe's,

we -- we're familiar with it, not every juror is, that's an

all boys school, right?

A. Correct.

Q. Okay. Generally, it's a private school, right?

A. Yes.

Q. Generally smaller class sizes, correct?

A. It is.

Q. You have any idea -- you graduated in 1989, correct?

A. '85.

Q. '85? Okay. And do you happen to know how big your

11:28AM 1 graduating class was?

11:28AM 2 A. About 200 students, I believe.

11:28AM 3 Q. Okay. Peter Gerace attended Saint Joe's at the same

11:29AM 4 time?

11:29AM 5 A. We were in the same graduating class.

11:29AM 6 Q. Okay. He graduated in '85 as well?

11:29AM 7 A. Yes.

11:29AM 8 Q. I'll talk to you about that a little bit more in a

11:29AM 9 moment.

11:29AM 10 First, were you -- you testified that you're married,

11:29AM 11 correct?

11:29AM 12 A. Correct.

11:29AM 13 Q. When did you meet your wife?

11:29AM 14 A. 19 -- March of 1987.

11:29AM 15 Q. Okay. And so that was -- that was after you graduated

11:29AM 16 from high school?

11:29AM 17 A. Correct.

11:29AM 18 Q. Had you -- you said you met her in 1987?

11:29AM 19 A. I met my wife in March of 1987.

11:29AM 20 Q. And did there come a time that you became aware that she

11:29AM 21 was familiar with Peter Gerace?

11:29AM 22 A. Actually, during that timeframe when I met her.

11:29AM 23 Q. Okay. So, right from the beginning of -- of your first

11:29AM 24 interactions with your wife, you realized she knows somebody

11:30AM 25 that you went to high school with?

11:30AM 1 A. Yes, the conversation of Saint Joe's came up. And her
11:30AM 2 and her friend, when I initially met them, said that they
11:30AM 3 knew Gerace.

11:30AM 4 Q. Okay. And you knew who they were talking about, right?

11:30AM 5 A. Peter Gerace.

11:30AM 6 Q. Yeah, the -- the -- who was a student in your class,
11:30AM 7 right?

11:30AM 8 A. Correct.

11:30AM 9 Q. So she -- did she tell you about the background she has
11:30AM 10 with him?

11:30AM 11 A. I don't know what that means.

11:30AM 12 Q. Well, she went to school with him as well, correct?

11:30AM 13 A. Did she tell me about going to school with him then, or
11:30AM 14 at some point during our relationship?

11:30AM 15 Q. In the initial conversation, did she tell you that she
11:30AM 16 went to school with Peter Gerace?

11:30AM 17 A. Not initially.

11:30AM 18 Q. Okay. At some point you come to learn that that's the
11:30AM 19 case, right?

11:30AM 20 A. Correct.

11:30AM 21 Q. She went to grade school at Saint Andrew's?

11:30AM 22 A. Correct.

11:30AM 23 Q. And Peter attended at the same time, correct?

11:30AM 24 A. Correct.

11:30AM 25 Q. So he actually went to school with her before he went to

11:30AM 1 school with you, correct?

11:30AM 2 A. Correct.

11:30AM 3 Q. And that is from kindergarten up to the eighth grade,

11:30AM 4 correct?

11:31AM 5 A. I believe that's what their school was.

11:31AM 6 Q. Okay. So she went to school with him for approximately

11:31AM 7 nine, ten years?

11:31AM 8 A. I don't know if they were together, I just know that they

11:31AM 9 went to Saint Andrew's together. I don't know if it was the

11:31AM 10 whole time or not, or what.

11:31AM 11 Q. Okay. And is Saint Andrew's a small private school?

11:31AM 12 A. It's a small Catholic elementary school.

11:31AM 13 Q. And did your brother-in-law -- your brother-in-law, Phil,

11:31AM 14 you testified about him on direct, right?

11:31AM 15 A. Correct.

11:31AM 16 Q. And did he go to Saint Andrew's as well?

11:31AM 17 A. I believe so.

11:31AM 18 Q. Phil, it's Domiano, is that how you pronounce the last

11:31AM 19 name?

11:31AM 20 A. Correct.

11:31AM 21 Q. So he went to the same school as -- as Mr. Gerace?

11:31AM 22 A. He went to Saint Andrew's for elementary school and

11:31AM 23 Saint Joe's for high school.

11:31AM 24 Q. Did he go to high school at Saint Joe's at the same time

11:31AM 25 as you?

11:31AM 1 A. I think he was a senior when I was a freshman.

11:31AM 2 Q. Okay. Were you aware that Peter Gerace and Phil Domiano

11:32AM 3 were close friends?

11:32AM 4 A. At what point?

11:32AM 5 Q. You become aware of that at some point?

11:32AM 6 A. Yes.

11:32AM 7 Q. Okay. When did you become aware of that?

11:32AM 8 A. Through the time that I was dating my wife, that her

11:32AM 9 brother Phil and Peter were friends, that they grew up

11:32AM 10 together in the same neighborhood.

11:32AM 11 Q. Okay. And you started dating her after you met her in

11:32AM 12 '87, right?

11:32AM 13 A. Correct.

11:32AM 14 Q. Okay. So at some time shortly thereafter, that you --

11:32AM 15 you realize that her brother is good friends with Peter

11:32AM 16 Gerace?

11:32AM 17 A. Correct.

11:32AM 18 Q. And when did you get married?

11:32AM 19 A. 1992.

11:32AM 20 Q. Okay. The entire time you're dating her, you're both

11:33AM 21 still in Buffalo, right?

11:33AM 22 A. Not the entire time.

11:33AM 23 Q. Okay. At some point, you move to Vegas?

11:33AM 24 A. No. We started dating in '87. In 1990, I moved to

11:33AM 25 Toronto, Canada for a job with the Immigration Service.

11:33AM 1 Q. Okay. And how long were you there?

11:33AM 2 A. I was in Toronto for five years.

11:33AM 3 Q. She moves to Toronto with you at some point?

11:33AM 4 A. So, right. So December of 1990, I moved to Toronto. And

11:33AM 5 then I got married in October of 1992. So she initially

11:33AM 6 didn't move up, but eventually she did while we were married.

11:33AM 7 Q. There comes a time when you both move to Las Vegas,

11:33AM 8 correct?

11:33AM 9 A. That we moved -- my family moved to Las Vegas in December

11:33AM 10 of 1999.

11:33AM 11 Q. Staying on Buffalo for just a little bit longer, Saint

11:34AM 12 Joe's High School, four years, correct?

11:34AM 13 A. That's correct.

11:34AM 14 Q. Okay. And you said you met Peter Gerace in your freshman

11:34AM 15 year at Saint Joe's, correct?

11:34AM 16 A. Correct.

11:34AM 17 Q. So he was there the entire four years?

11:34AM 18 A. Yes.

11:34AM 19 Q. And so were you, right?

11:34AM 20 A. Yes.

11:34AM 21 Q. All right. And you would generally see him every single

11:34AM 22 day while you were at school, correct?

11:34AM 23 A. We weren't really in a lot of classes together, I

11:34AM 24 wouldn't say I would see him every single day.

11:34AM 25 Q. You did have classes together though, didn't you?

11:34AM 1 A. We did have a couple classes together.

11:34AM 2 Q. You played hockey in high school?

11:34AM 3 A. I did play hockey --

11:34AM 4 Q. Okay.

11:34AM 5 A. -- in high school for Saint Joe's.

11:34AM 6 Q. And at some point Peter played hockey with you?

11:34AM 7 A. Peter did not play for Saint Joe's at the same time I

11:35AM 8 did. Not on the same team, I'm sorry. He was not on the

11:35AM 9 same team as I was for Saint Joe's.

11:35AM 10 Q. He was not on the same team at Saint Joe's?

11:35AM 11 A. He played for Saint Joe's at a different -- I played

11:35AM 12 freshman year and senior year, I played travel in the middle.

11:35AM 13 I remember he played for Saint Joe's, but not on any of the

11:35AM 14 teams I played for for Saint Joe's. There were multiple

11:35AM 15 teams at Saint Joe's, I believe there were like five.

11:35AM 16 Q. Okay. You were aware he was playing hockey at some

11:35AM 17 point?

11:35AM 18 A. He did play hockey from what I remember at -- freshman

11:35AM 19 year at Saint Joe's.

11:35AM 20 Q. Okay.

11:35AM 21 A. That's how I initially met him.

11:35AM 22 Q. Oh, you met him through hockey?

11:35AM 23 A. Through when I was trying out for hockey at Saint Joe's.

11:35AM 24 Q. And then during the course of the four years, you end up

11:35AM 25 having some classes together.

11:35AM 1 A. Correct, I don't know how many, there weren't many, but
11:35AM 2 there were at least -- at least one that I remember.

11:35AM 3 Q. What class was that?

11:35AM 4 A. That was a history class with Mr. Wolf.

11:35AM 5 Q. Okay. And there may have been other classes, you just
11:35AM 6 don't necessarily recall, right?

11:35AM 7 A. I can't remember for sure, but I do remember if there
11:36AM 8 were -- there weren't many.

11:36AM 9 Q. I also heard you were pretty good at baseball?

11:36AM 10 A. Oh, thank you. I don't know if that's true, but --

11:36AM 11 Q. You played baseball though, right?

11:36AM 12 A. I did.

11:36AM 13 Q. He -- he -- he tried out for baseball?

11:36AM 14 A. Okay.

11:36AM 15 Q. At the same time, right?

11:36AM 16 A. I don't remember.

11:36AM 17 Q. Okay. Okay. So, let's fast forward to your professional
11:36AM 18 career. You move to Las Vegas, right?

11:36AM 19 A. I did.

11:36AM 20 Q. And that's in 1999?

11:36AM 21 A. Yes. December of '99.

11:36AM 22 Q. Okay. And you testified on direct about a period of time
11:36AM 23 where you pursued a career in the FBI, correct?

11:36AM 24 A. That's correct.

11:36AM 25 Q. You said that was after 9/11, right?

11:36AM 1 A. Yes.

11:36AM 2 Q. There was, after 9/11, an increased interest in

11:36AM 3 counterterrorism efforts by the Bureau, correct?

11:37AM 4 A. Correct.

11:37AM 5 Q. And there was certainly a number of new professional

11:37AM 6 responsibilities that the Bureau had taken on at that point?

11:37AM 7 A. I don't know if they were new, but there were more

11:37AM 8 priorities. They had JTTF terrorism task force before that,

11:37AM 9 but they weren't a priority like they are today and after

11:37AM 10 9/11.

11:37AM 11 Q. And there were professional opportunities for new agents

11:37AM 12 or potentially new agents to join the FBI at that time?

11:37AM 13 A. They were doing a lot of hiring after 9/11.

11:37AM 14 Q. So that's a point when you -- you take a time -- a period

11:37AM 15 of time in your professional career where you work with the

11:37AM 16 FBI, correct?

11:37AM 17 A. That is correct.

11:37AM 18 Q. But you ultimately return to Las Vegas, correct?

11:37AM 19 A. I did.

11:37AM 20 Q. And what year did you return to Las Vegas?

11:37AM 21 A. June of 2000 -- July of 2003. I believe.

11:37AM 22 Q. Okay. There comes a time in Las Vegas where your

11:37AM 23 brother-in-law moves out there, correct?

11:37AM 24 A. He -- he lived in Vegas before we did.

11:38AM 25 Q. He moved out to Vegas before you took a job there?

1 A. Oh, years before. Like, right after I met my wife.

2 Q. Okay. So when -- the fact that he lived out there, did
3 that -- was that a consideration for you or your wife when
4 you moved out there?

5 A. That was my selling point, because my wife did not want
6 to leave Buffalo. I shouldn't call it a selling point, it
7 was one of the points that she brought up to me and was
8 comforting to her and that I was aware of because she didn't
9 want to leave Western New York.

10 Q. And was he involved in any criminal activity at that
11 time?

12 A. Not to my knowledge.

13 Q. Okay. There does come a time where you learn that he's
14 involved in criminal activity, correct?

15 A. There was a time when I did learn that he was involved in
16 a criminal investigation with the Las Vegas police.

17 Q. Okay. And you knew before that that he was involved in
18 criminal activity, correct?

19 A. Excuse me?

20 Q. You knew before the investigation involving the Las Vegas
21 police that he was involved in criminal activity, correct?

22 A. No. And I don't understand, I don't understand that
23 question. I found out after he was investigated.

24 Q. You found out after he was investigated?

25 A. Or, during.

1 Q. You found out during the course of the investigation?

2 A. Yes.

3 Q. All right. We'll come back to that.

4 There comes a time where you return to New York, and at
5 that time you start at the New York City office, correct?

6 A. So, yes, I started at the New York field division, the
7 New York City office in December, again, of 2013.

8 Q. Okay. And the -- the intention was always to return to
9 Buffalo, right?

10 A. When I went to New York, the intention was -- and what I
11 was told, we don't have a vacancy in Buffalo now, but if you
12 go and work in the field division as soon as a position opens
13 up, we will move you to Buffalo.

14 Q. And that was your intention to return to Buffalo when
15 that position opens up?

16 A. That's why I went to New York, yeah.

17 Q. Okay. So, you're still in New York City when this
18 reunion occurs for the Saint Joe's, correct?

19 A. That's correct.

20 Q. All right. And you travelled in for that, correct?

21 A. Yep. I didn't travel in specifically for the reunion,
22 but that was a weekend that I did come home.

23 Q. Okay. Okay. So you came home that weekend, and the
24 reunion happened to be scheduled that weekend?

25 A. Right. I would have came home either way.

11:40AM 1 Q. Okay. So you attend this reunion, this is about June
11:40AM 2 2015?

11:40AM 3 A. Correct.

11:40AM 4 Q. All right. And at the reunion you're seeing a lot of
11:40AM 5 people that you probably haven't seen for a pretty long time
11:40AM 6 at that point, correct?

11:40AM 7 A. Pretty true, yep.

11:40AM 8 Q. All right. This was -- was this the 20 -- this would
11:40AM 9 have been 30th?

11:40AM 10 A. It would have been, yep.

11:41AM 11 Q. Had you seen Peter Gerace at any point after graduation
11:41AM 12 prior to this reunion?

11:41AM 13 A. Sure. There were a few times I think, yes.

11:41AM 14 Q. Okay. Well, you testified to on direct about Brennan's.
11:41AM 15 Was that -- that preceded this?

11:41AM 16 A. Could you say that again? I'm sorry.

11:41AM 17 Q. On direct you testified to a time that you saw Peter
11:41AM 18 Gerace at -- at the bar Brennan's, correct?

11:41AM 19 A. At Brennan's, correct.

11:41AM 20 Q. Yeah, was that before the reunion?

11:41AM 21 A. That would have been, yes, that would have been before.
11:41AM 22 So, 2000 -- around 2014. And then the reunion was '15.

11:41AM 23 Q. Okay. And you had seen him a couple times other than
11:41AM 24 that as well?

11:41AM 25 A. During what timeframe?

1 Q. Any timeframe between graduation and the reunion, you had
2 seen him other times?

3 A. Yes.

4 Q. Okay. Do you remember where or when?

5 A. While I was in college, I played on, like, a men's bar
6 league hockey team. There was a guy on the team whose
7 cousin -- there was a guy on the team who had a cousin that
8 was cousins with Gerace, and Gerace played on this men's ice
9 hockey team for -- I don't know if it was a year or several
10 games. So there was that timeframe.

11 And then I may have seen him, I remember once -- no, that
12 was while I was in Vegas. I saw him once at Cracker Barrel
13 with my wife, like, in passing. I don't -- I think that's
14 while I was in Vegas.

15 Q. Okay. So you have memories of just sort of seeing him a
16 couple times in passing?

17 A. Yeah, I remember hockey, because it was while I was in
18 college. And then after that, yeah.

19 Q. He didn't -- he didn't go to the same college as you?
20 Peter Gerace didn't go to the same college?

21 A. I don't believe so.

22 Q. Okay. But he was playing on this hockey team that --

23 A. He played on that men's hockey team for, I think it was a
24 year, several games or the year, whatever it was. And that
25 was while I was in college.

1 Q. Okay. All right. Now, on the night of --

2 **MR. FOTI:** Well, actually first, can we pull up
3 Government Exhibit 99 in evidence? And go to page 13.

4 **BY MR. FOTI:**

5 Q. All right. Sir, is that a picture from the reunion?

6 A. Correct.

7 Q. And I'm gonna circle one of the individuals, I'm going to
8 circle one of the individuals on this picture. I'm circling
9 an individual in a blue shirt. Is that you?

10 A. Yes.

11 Q. This is on the left side of the picture?

12 A. Yep.

13 Q. And behind you, is that Peter Gerace?

14 A. Again, it's so dark and fuzzy, but seeing this picture
15 before, I believe so. But I can't tell by looking at this
16 picture.

17 Q. Okay. So from this picture, you don't actually see him
18 because there's -- you can see there's a little bit of a head
19 behind you, your shoulder?

20 A. It's blurry.

21 Q. You don't know if it's Mr. Gerace from the picture?

22 A. It's dark and blurry, I think so from looking at this,
23 but I can't tell from looking at this.

24 **MR. FOTI:** Okay. Can we go to the next page of the
25 exhibit, page 14?

11:44AM 1 I know this is sideways, there's probably a way for
11:44AM 2 me --

11:44AM 3 **MR. COOPER:** She can rotate it. There you go.

11:44AM 4 **MR. FOTI:** Thank you.

11:44AM 5 **BY MR. FOTI:**

11:44AM 6 Q. This picture is a little bit more clear. You can see the
11:44AM 7 face behind you, right?

11:44AM 8 A. Yep.

11:44AM 9 Q. You agree that's Peter Gerace?

11:44AM 10 A. I will agree.

11:44AM 11 Q. Okay. And this was taken at Big Ditch?

11:44AM 12 A. I'm -- yeah. That would have been -- so the reunion was
11:44AM 13 at Big Ditch, this would have been taken at Big Ditch.

11:44AM 14 Q. And, again, for anybody who's not familiar with it, Big
11:44AM 15 Ditch is brewery here in Buffalo?

11:44AM 16 A. Yes, downtown.

11:44AM 17 Q. Yeah, not too far from here, right?

11:44AM 18 A. No.

11:44AM 19 Q. Okay. And this was obviously an organized event for an
11:45AM 20 alumni reunion, correct?

11:45AM 21 A. Correct.

11:45AM 22 Q. You're wearing what appears to be a name tag. Was that a
11:45AM 23 name tag identifying yourself as a graduate of Saint Joe's?

11:45AM 24 A. Yeah, I believe it just had all our names on it.

11:45AM 25 Q. Okay. Anything -- any other information on it other than

11:45AM 1 just -- just the name and maybe the year you graduated?

11:45AM 2 A. I -- I can't remember.

11:45AM 3 Q. Is it just your class that attended this reunion, or were

11:45AM 4 there other members of other classes that attended?

11:45AM 5 A. It was just our graduating class.

11:45AM 6 Q. Okay. Now, during the course of this reunion, you

11:45AM 7 testified on direct that you heard a couple of statements

11:45AM 8 from other classmates about Peter Gerace, correct?

11:45AM 9 A. That's correct.

11:45AM 10 Q. Okay. And one of the statements was from another --

11:45AM 11 another graduate who said that they were gonna go to

11:45AM 12 Pharaoh's and do lines off -- lines of coke off a stripper's

11:46AM 13 ass, right?

11:46AM 14 A. Yes.

11:46AM 15 Q. Okay. And that individual you -- you identified as John

11:46AM 16 Maher?

11:46AM 17 A. Correct.

11:46AM 18 Q. Okay. And he's -- he's since passed away related to

11:46AM 19 COVID, correct?

11:46AM 20 A. Correct.

11:46AM 21 Q. Okay. And he was joking, or it appeared he was joking

11:46AM 22 when he said that, right?

11:46AM 23 A. It didn't appear to me.

11:46AM 24 Q. It -- to you it seemed --

11:46AM 25 A. I took it.

11:46AM 1 Q. -- like he was being serious?

11:46AM 2 A. I took it serious.

11:46AM 3 Q. You took it seriously?

11:46AM 4 A. Yes.

11:46AM 5 Q. And you -- you were working at the DEA at that time,

11:46AM 6 right?

11:46AM 7 A. Correct.

11:46AM 8 Q. And people talk about where they're employed at this

11:46AM 9 point in their life, correct?

11:46AM 10 A. People do talk about where they're employed.

11:46AM 11 Q. You weren't trying to hide the fact that you were a

11:46AM 12 member of the DEA, correct?

11:46AM 13 A. What -- what do you mean?

11:46AM 14 Q. You weren't -- you weren't concealing your employment

11:46AM 15 from other graduates during the course of this reunion,

11:46AM 16 right?

11:46AM 17 A. I think a good percentage, at least my friends, already

11:46AM 18 knew I worked for DEA.

11:46AM 19 Q. Okay, so --

11:46AM 20 A. I don't know which ones did and didn't, but I know that

11:46AM 21 some people knew I worked for DEA.

11:46AM 22 Q. And if anybody didn't know and they asked you what you're

11:47AM 23 up to, you're gonna tell them that your -- what your

11:47AM 24 profession is at that point?

11:47AM 25 A. If someone asked me, based on my classmates, most of them

11:47AM 1 probably, ones that were friends.

11:47AM 2 Q. Had you talked to John Maher at all that night other than
11:47AM 3 this -- this statement that he made to you?

11:47AM 4 A. Not that I -- no, not that I remember, no.

11:47AM 5 Q. Okay. So your memory is he just makes this unsolicited
11:47AM 6 statement that I'm going to Pharaoh's to do a line of coke
11:47AM 7 off a stripper's ass?

11:47AM 8 A. Yeah. He was with, like, three other people, and said it
11:47AM 9 right in front of me. Right -- right to me.

11:47AM 10 He said, hey, Casullo, we're going to strippers and we're
11:47AM 11 gonna snort coke off stripper's asses.

11:47AM 12 Q. To the DEA agent in the room?

11:47AM 13 A. He said it to me. I don't know if he knew I worked for
11:47AM 14 the DEA, but he said it to me.

11:47AM 15 Q. And -- and you took him to be serious?

11:47AM 16 A. Yes, I did.

11:47AM 17 Q. Okay.

11:47AM 18 A. I -- I -- I know John Maher, or knew John Maher.

11:47AM 19 Q. There comes a time in the evening where you go to Tappo,
11:47AM 20 correct?

11:48AM 21 A. There was.

11:48AM 22 Q. And Tappo was a restaurant very close to Big Ditch,
11:48AM 23 correct?

11:48AM 24 A. It was, I believe, diagonal across the street.

11:48AM 25 Q. All right. And you go to Tappo with Mr. Gerace, correct?

11:48AM 1 A. I did agree to walk across the street with Gerace to
11:48AM 2 Tappo's.

11:48AM 3 Q. All right. And was anybody else with the two of you at
11:48AM 4 that time?

11:48AM 5 A. No.

11:48AM 6 Q. Okay. So he makes this invite to you personally?

11:48AM 7 A. He said, hey, Bongiovanni's across the street at Tappo's
11:48AM 8 with my brother, let's go see him.

11:48AM 9 And I said, no, that's all right.

11:48AM 10 And he asked a second time, which I said no.

11:48AM 11 And by the third time I agree, I was like, sure.

11:48AM 12 Q. Okay. Had -- had you and Mr. Gerace talked about

11:48AM 13 Mr. Bongiovanni prior to that point?

11:48AM 14 A. At the reunion?

11:48AM 15 Q. Yeah.

11:48AM 16 A. I don't remember. I don't remember doing that. I don't
11:48AM 17 think so.

11:48AM 18 Q. As far as you know, any reference to Mr. Bongiovanni was
11:48AM 19 because of his affiliation with the DEA?

11:49AM 20 A. I'm assuming he's telling me that because Bongiovanni
11:49AM 21 worked for DEA and so did I.

11:49AM 22 Q. Right. Okay. You don't recall bringing up Joe
11:49AM 23 Bongiovanni to Peter Gerace, correct?

11:49AM 24 A. I don't remember doing that.

11:49AM 25 Q. Okay. You just remember that Peter Gerace brings up the

1 fact that he's aware that Joe Bongiovanni's across the
2 street?

3 A. Said he was across the street with his brother.

4 Q. And he asked you if you wanted to go across the street
5 with him?

6 A. He did.

7 Q. And you've testified now a couple times that -- that he
8 asked you more than once?

9 A. He did.

10 Q. Okay. And you -- your testimony is it's three times that
11 he asked you, and then you agreed to go.

12 A. Yeah, I was initially reluctant and then I agreed.

13 Q. Okay. And nothing changed between the first time and the
14 third time other than he had asked you again?

15 A. I became curious to see Bongiovanni across the street
16 with Anthony Gerace with my own eyes.

17 Q. Okay. So your -- your interest now was -- was actually
18 going across there to see Mr. Bongiovanni?

19 A. To physically see Joseph Bongiovanni socializing with
20 Anthony Gerace.

21 Q. Okay. So your testimony is on the third time you say
22 okay, I'll go across the street with you to Tappo's, and you,
23 you agree to actually go over to the restaurant with
24 Mr. Gerace, right?

25 A. I walked over, correct.

11:50AM 1 Q. And the two of you walk over together, right?

11:50AM 2 A. Yes.

11:50AM 3 Q. And at -- once you arrive at Tappo's, you do see that

11:50AM 4 Mr. Bongiovanni is there across the street, right?

11:50AM 5 A. He's at the bar.

11:50AM 6 Q. Okay. After Tappo's, did you return to the reunion at

11:50AM 7 any point?

11:50AM 8 A. We did.

11:50AM 9 Q. Okay. When you say "we did," you're talking about?

11:50AM 10 A. Meaning me, Gerace, and Bongiovanni walked back across.

11:51AM 11 Q. Mr. Bongiovanni joined you?

11:51AM 12 A. The three of us walked back.

11:51AM 13 Q. Okay. The three of you go back to the reunion and then

11:51AM 14 do you stay there for the rest of the night?

11:51AM 15 A. Yes. I did. Yeah, for however long it was. It wasn't

11:51AM 16 very long. I didn't stay very late. But I did not -- yeah,

11:51AM 17 we went back there. And from there, I went home.

11:51AM 18 Q. And how long were you at Tappo's, do you know? Do you

11:51AM 19 remember?

11:51AM 20 A. The entire time? I don't know. Maybe a couple hours, I

11:51AM 21 can't remember for sure. It wasn't crazy long.

11:51AM 22 Q. Okay. Now, based on -- I believe your testimony is that

11:51AM 23 based on things that you heard at the reunion, you decide to

11:51AM 24 start investigating Mr. Gerace, correct?

11:51AM 25 A. It led me, at the -- when I got back to Buffalo, at some

1 point, to have a conversation with my supervisor about, hey,
2 maybe we should look into this, what are your thoughts.

3 Q. Okay. Is that the conversation you testified about on
4 direct where you had the intention of pursuing a subpoena?

5 Or did you have a conversation before that?

6 A. No, it was during that same conversation that the
7 subpoena with the phone records came up between me and Greg.
8 I can't remember if he mentioned it, like, hey, subpoena the
9 records, or if I mentioned it to him. But it was me
10 initially presenting to him maybe we should look into this,
11 what do you think?

12 And then he had -- his comment back to me was, yeah, I
13 think we should. Other people have tried to investigate this
14 guy before for years. No one's been able to get him. And I
15 think that we should pursue this. I think that we might find
16 a lot of user amounts, but hopefully we can find a source of
17 supply.

18 Q. Okay. And while you're testifying here today, you're
19 saying that the reason that you had this conversation was
20 because of what you heard at the reunion?

21 A. It was enough for me to have a conversation with Greg
22 that maybe we should look into this.

23 Q. Okay. And prior to that, you had, even though you didn't
24 testify about it on direct, prior to that you had made
25 attempts to talk to other law enforcement about Mr. Gerace,

1 correct?

2 A. What do you mean?

3 Q. I'm asking you, did you ever talk to other law

4 enforcement about Mr. Gerace prior to that meeting?

5 A. I did talk to the FBI once while I was in Las Vegas about

6 Mr. Gerace.

7 Q. Was that in 2010?

8 A. I can't remember, but it's possible. It would have been

9 during that timeframe.

10 Q. Would looking at a prior email related to the timeframe

11 help refresh your recollection?

12 A. Certainly.

13 **MR. FOTI:** Can we pull up just -- just for the

14 witness Government Exhibit 3557Y?

15 **BY MR. FOTI:**

16 Q. So that's not in evidence, so don't read it out loud,

17 but--

18 A. Pardon?

19 Q. -- just read it to yourself.

20 A. Pardon?

21 Q. It's -- it's not in evidence, so don't read it out loud.

22 A. Okay. Okay.

23 Q. Just read it to yourself.

24 A. Okay.

25 Q. And let me know when you're done.

11:54AM 1 A. Okay.

11:54AM 2 Q. Okay. It was around approximately 2010 when you had the

11:54AM 3 conversations with the FBI that you referred to?

11:54AM 4 A. Upon seeing that email, I would agree with that.

11:54AM 5 Q. Okay. It refreshes your recollection that that's at

11:54AM 6 least approximately the time, right?

11:54AM 7 A. Correct.

11:54AM 8 Q. Okay. And you spoke to Tom Herbst at that time, correct?

11:54AM 9 A. I did.

11:54AM 10 Q. All right. And you also spoke to him about

11:54AM 11 Mr. Bongiovanni at that time, correct?

11:54AM 12 A. He brought it up. Actually, I can't remember who brought

11:54AM 13 it up. But there became an awareness between the two of them

11:55AM 14 that they knew each other.

11:55AM 15 Q. Who's the "two of them" you're talking about?

11:55AM 16 A. That Bongiovanni and Gerace were friends.

11:55AM 17 Q. Okay. That was something that you discussed with

11:55AM 18 Mr. Herbst at that time?

11:55AM 19 A. Like, for a second. Just basically Tom knew that they --

11:55AM 20 Tom Herbst, the FBI agent, knew that they were friends, or

11:55AM 21 knew each other.

11:55AM 22 Q. And this is back in around 2010?

11:55AM 23 A. Correct.

11:55AM 24 Q. You're talking about five years before this reunion?

11:55AM 25 A. Correct.

1 Q. And did Tom Herbst reach out to you or did you reach out
2 to him?

3 A. I was talking to Tom Herbst about Gerace, I believe.

4 Q. You reached out to him?

5 A. I reached out to an FBI agent named Bill Fallon who
6 initially -- who passed years after this. Bill Fallon was
7 close friends with my sister, lived across the street in
8 Clarence. So I met Bill Fallon when I was going to the DEA
9 Academy, because he just got back from the FBI Academy, I
10 became close friends with Bill Fallon as well. He was
11 someone that I trusted, a great deal.

12 So when I called the FBI, I called Bill Fallon first.
13 And then Bill Fallon, who was on the JTTF, put me in contact
14 with Tom Herbst because he was on the Safe Streets Task Force
15 and was more appropriate for me to talk to him. He was more
16 knowledgeable about those types of things that we were
17 working on.

18 Q. Any follow-up conversations with him after 2010?

19 **MR. COOPER:** With whom? With Bill?

20 **BY MR. FOTI:**

21 Q. Any -- sorry, I should rephrase that.

22 Any follow-up conversations with Tom Herbst after 2010?

23 A. So I had, I believe, there were several phone calls with
24 Tom. Not about that, but about other cases, too.

25 Q. Okay. And when you would talk to him about other cases,

1 would you also talk to him about Peter Gerace?

2 A. It was just initially, those initial conversations were
3 about Gerace, and then it was really not much after that. It
4 was more towards an investigation that we were working on at
5 the time on guy by the name of Sam Spano.

6 Q. Okay. All right. So 2015, this is five years after
7 those conversations you had with Tom Herbst, correct?

8 A. Correct.

9 Q. And you decide to have a conversation with your
10 supervisor about Mr. Gerace, correct?

11 A. Correct.

12 Q. And you tell him, I think that there may be a -- well,
13 the conversation includes a discussion of subpoenaing phone
14 records, correct?

15 A. Yep, it came up during that conversation.

16 Q. You don't remember whose idea that was?

17 A. I can't remember if Greg said, hey, just subpoena the
18 phone number, or if I said we should do it. It's such a
19 standard practice, I can't remember if it was him or I that
20 decided.

21 Q. In any event, when it comes up you tell him I think we
22 might see within the call logs Joseph Bongiovanni's phone
23 number?

24 A. I said it's possible. Just giving you a heads-up, I
25 don't want you blind sided when these records come back, it's

1 possible that his phone number may come up in the phone
2 records.

3 Q. Whether you suggested it or not, you've described it as
4 standard practice. So when you have this conversation, you
5 certainly knew that a subpoena for phone records was a
6 possibility, right?

7 A. Yeah, definitely of a possibility, beginning stages of --
8 of an investigation.

9 Q. Okay. So you initiate this conversation to start an
10 investigation that you knew is going to potentially implicate
11 Mr. Bongiovanni, correct?

12 A. I wouldn't agree with that at -- at -- at all. At that
13 point, I had no idea how close of friends they were. And as
14 far as implicating Bongiovanni, I didn't think that at the
15 time.

16 I knew it was enough to have a conversation so Greg
17 wouldn't be blind sided. Initially, my beliefs were that Joe
18 had poor judgement and had -- was friends with someone that,
19 based on DEA standards, he probably shouldn't have been
20 friends with.

21 Q. When you say "Greg," you're, you're --

22 A. Supervisor.

23 Q. -- you're talking your supervisor, right?

24 A. Yep.

25 Q. He didn't come to you to talk about launching this

1 investigation, right?

2 A. I brought it to his attention, asked him what his
3 thoughts were.

4 Q. During the course of that conversation, did you tell him
5 that you went to high school with Mr. Gerace?

6 A. It's either during that conversation or shortly
7 thereafter, I told him how Gerace and I went to high school
8 together.

9 Q. Okay. And did you tell him that your wife went to school
10 with Mr. Gerace?

11 A. I may have at some point, but not initially.

12 Q. Okay. Did you tell him your brother-in-law is close
13 friends with Mr. Gerace?

14 A. I believe at some point, but I don't think it was
15 initially.

16 Q. Did you tell him anything that occurred in Las Vegas
17 involving your brother-in-law related to your professional
18 record?

19 A. No.

20 Q. And you -- you know what I'm referring to, right?

21 A. Yes.

22 Q. Did there come a time where you advised him of that?

23 A. I don't believe I ever had that conversation with Greg.

24 Q. Okay. I want to talk to you briefly about the practice
25 of getting phone records because we talked -- you mentioned

12:00PM 1 it on direct, but I just want to go a little bit deeper into

12:00PM 2 it. A subpoena is different from a warrant, correct?

12:00PM 3 A. That's correct.

12:00PM 4 Q. All right. You -- you don't have to go to a court for

12:00PM 5 authorization for the subpoena, correct?

12:00PM 6 A. It depends on the type of subpoena.

12:00PM 7 Q. This particular type of subpoena you didn't need to,

12:01PM 8 correct?

12:01PM 9 A. That was -- right. The one that I issued was an

12:01PM 10 administrative subpoena, that was more or less specific to

12:01PM 11 narcotics investigations.

12:01PM 12 Q. Okay. And it's an administrative subpoena that you can

12:01PM 13 issue in your capacity as a special agent with DEA, correct?

12:01PM 14 A. I can do it. And then it goes to a supervisor for

12:01PM 15 approval. And then once a supervisor approves it, it goes

12:01PM 16 directly to the phone carrier, if that's who you're

12:01PM 17 subpoenaing. You can subpoena other things besides phone

12:01PM 18 carriers.

12:01PM 19 Q. For this type of subpoena, you don't need to get anybody

12:01PM 20 from the U.S. Attorney's Office involved?

12:01PM 21 A. They don't have to sign-off on that. We can make them

12:01PM 22 aware of what we're doing through the course of the

12:01PM 23 investigation, but we don't need their authorization to send

12:01PM 24 an administrative subpoena.

12:01PM 25 Q. Did you make them aware, was there anybody in the U.S.

1 Attorney's Office you were consulting with?

2 A. At that point I don't think we were consulting. It was
3 at the very beginning stages. So at that point of the
4 administrative subpoena, I don't believe so.

5 Q. The only person you consulted with this was your
6 supervisor that you were testifying about?

7 A. Correct.

8 Q. That you remember, at least?

9 A. Correct.

10 Q. All right. So you issue the subpoena and get the return
11 of these phone records, correct?

12 A. That's correct.

13 Q. All right. And you review them, and you specifically
14 looked for Mr. Bongiovanni's number, correct?

15 A. I was instructed by my supervisor to look for his number.

16 Q. So you did, you looked for his number?

17 A. And I did.

18 Q. Okay. And you did locate, according to your testimony
19 that there was -- that you saw his phone number in the
20 records?

21 A. Right. When I got the records back, it wasn't the actual
22 records. What happens is it comes back, and then an analyst
23 will put it in readable format as opposed to, like, raw data.
24 And I had a list of all the numbers that were in contact with
25 Gerace's phone, and the frequency of the phone calls and the

1 date range.

2 Q. And what's your recollection in terms of the frequency
3 with the phone calls to Mr. Bongiovanni?

4 A. Again, I don't remember the exact number. I believe it
5 was somewhere maybe the top ten most-frequently called
6 numbers, I can't remember for certain. I -- I do remember it
7 was definitely more than -- than one, it may have been at
8 least several.

9 Q. Okay.

10 A. Unless I saw it, I can't remember for certain.

11 Q. That's okay. So more than one?

12 A. It was more than one, I remember that.

13 Q. And you said it may be in the top ten, and you don't have
14 any memory of what the breakdown is for each of those
15 individuals in the top ten?

16 A. Unless I saw that frequency report again, I -- I don't
17 remember for sure.

18 Q. But in any event you see the phone number in there,
19 right?

20 A. Yep.

21 Q. And you go talk to your supervisor, correct?

22 A. And I brought the actual frequency report to my
23 supervisor, showed it to him, and, yes.

24 Q. Okay. And did you make any -- did you document in any
25 way your review of that report?

12:04PM 1 A. Like in what way? In a, like, in a DEA-6 report of
12:04PM 2 investigation, like in a memo? Like, what do you mean
12:04PM 3 exactly?

12:04PM 4 Q. In any way.

12:04PM 5 A. I did not document in any way on any official DEA form
12:04PM 6 that contact.

12:04PM 7 Q. And you just mentioned that there's multiple types of
12:04PM 8 forms that you could document it in, correct?

12:04PM 9 A. No, I just brought it to my supervisor for him to handle.

12:04PM 10 Q. Okay. So, you testified on direct that at some point,
12:04PM 11 there's this meeting with Mr. Bongiovanni because of tension
12:04PM 12 that's developed?

12:04PM 13 A. I asked him if he would meet me in the -- if he would be
12:04PM 14 willing to talk to me in the DEA conference room privately,
12:04PM 15 him and I.

12:04PM 16 Q. Okay. And you testified on direct how this conversation
12:04PM 17 that you said happened played out between the two of you,
12:04PM 18 correct?

12:04PM 19 A. Yes. I went through that step by step.

12:05PM 20 Q. And nobody else was present, obviously, correct?

12:05PM 21 A. It was just Bongiovanni and myself.

12:05PM 22 Q. Okay. And you didn't document this afterwards in a
12:05PM 23 DEA-6, correct?

12:05PM 24 A. I didn't put it in a DEA-6, but I did document in a memo
12:05PM 25 afterwards after being requested by Ed Orgon. He told me to

12:05PM 1 prepare it for him the next day, and then he never requested
12:05PM 2 it. He never asked for it. But I did prepare one.
12:05PM 3 Q. Okay.
12:05PM 4 A. But that wasn't until, like, 2018 I believe.
12:05PM 5 Q. All right. So, in the -- in the days following that
12:05PM 6 meeting, you don't document it in a memorandum, correct?
12:05PM 7 A. I did not.
12:05PM 8 Q. In the days that follow, you didn't document in a DEA-6
12:05PM 9 or anything like that, correct?
12:05PM 10 A. I did not.
12:05PM 11 Q. You didn't document it in any way in relation to an
12:05PM 12 investigation of Mr. Gerace, correct?
12:05PM 13 A. No.
12:05PM 14 Q. And I'm talking about the days afterwards, and going
12:05PM 15 beyond that, into the months afterwards, you didn't document
12:05PM 16 it in any type of memorandum, correct?
12:06PM 17 A. No.
12:06PM 18 Q. Today, you've testified that you told a couple close
12:06PM 19 friends at some point about this conversation?
12:06PM 20 A. I did.
12:06PM 21 Q. And who -- who were they?
12:06PM 22 A. Different special agents that I had worked with.
12:06PM 23 Q. Yeah. Who were they?
12:06PM 24 A. So Amy Roderick. She was a special agent that was my
12:06PM 25 field training agent when I was in Las Vegas. She was in

1 Miami. Her husband was my first boss, who was a special
2 agent in charge. So Amy Roderick would have been one.

3 Another person would have been Tim Moran, who was my
4 supervisor in Las Vegas at one point, who I told about it,
5 who was working in headquarters at DEA special operations
6 division.

7 I told an agent that I worked with in New York that was
8 working in Buffalo, Steve Chocksey, about it.

9 I told Shane Nastoff, a DEA agent in Buffalo who I worked
10 with and trusted about it.

11 I told a CBP internal affairs officer who was a close
12 friend about it.

13 Q. You told an internal affairs officer about it?

14 A. I told a CBP Department of Homeland Security internal
15 affairs officer about it.

16 Q. And as far as you know, none of these people documented
17 it?

18 A. I have no knowledge of any of them documenting it.

19 Q. Did they tell you this is something you have to report?

20 A. They did not say that to me. They're, like, oh, boy.

21 Most of them were, like, oh, boy.

22 Q. So you're talking about at least five different
23 individuals that work for the federal government?

24 A. They were five -- those five people that I mentioned.

25 And there may have been one or two others, I can't remember

12:07PM 1 for sure.

12:07PM 2 Q. And your -- your memory is that each of them just respond
12:07PM 3 with a general oh, boy?

12:07PM 4 A. No, it wasn't oh, boy. I shouldn't explain it like that.

12:07PM 5 But the general of, like, that's -- excuse the language, a

12:07PM 6 bag of shit to deal with. Yeah, that's concerning. Is he

12:07PM 7 involved in more? The racist comments alone are horrifying.

12:08PM 8 That would start an internal investigation. And is there

12:08PM 9 even more than that, as far as, is this guy corrupt working

12:08PM 10 both sides?

12:08PM 11 Q. Yeah, I mean --

12:08PM 12 A. That's the sentiment.

12:08PM 13 Q. The alleged racist comments, if somebody believes it,

12:08PM 14 they've got -- they have a responsibility to do something

12:08PM 15 about it, don't they?

12:08PM 16 A. Yes. Yes.

12:08PM 17 Q. And Shane Nastoff is somebody you work with in Buffalo,

12:08PM 18 correct?

12:08PM 19 A. Yes.

12:08PM 20 Q. And he would work with the DEA in Buffalo, correct?

12:08PM 21 A. Yes.

12:08PM 22 Q. And if you tell him about that, he also has a

12:08PM 23 responsibility to report it, correct?

12:08PM 24 A. I'm pretty sure that that's part of the policy.

12:08PM 25 Q. Did he tell you, hey, you've got to report this?

12:08PM 1 Otherwise, I'm holding on to information that I'm obligated
12:08PM 2 to report?
12:08PM 3 A. He never said that.
12:08PM 4 Q. He never told you that you have a responsibility to
12:08PM 5 report this?
12:08PM 6 A. No.
12:08PM 7 Q. And you didn't report it?
12:08PM 8 A. I didn't.
12:08PM 9 Q. This -- this conversation that allegedly includes racial
12:08PM 10 slurs, you didn't feel was necessary to report at that time?
12:08PM 11 A. Oh, it was necessary, I just chose not to.
12:08PM 12 Q. Okay. And let's talk about why it's necessary. You
12:09PM 13 talked about on direct that you take an oath, correct?
12:09PM 14 A. That is correct.
12:09PM 15 Q. And that oath isn't just to follow DEA policy, right?
12:09PM 16 A. There's multiple things to that oath.
12:09PM 17 Q. And you specifically talked about protecting the
12:09PM 18 Constitution, right?
12:09PM 19 A. Yes.
12:09PM 20 Q. And now you're saying that an agent supposedly made a
12:09PM 21 comment to you that he has a racial bias against black people
12:09PM 22 and Hispanic people, right?
12:09PM 23 A. Correct.
12:09PM 24 Q. And if you don't say something, then that person is going
12:09PM 25 to be able to continue his investigation with a bias into

1 everything he touches after that, right?

2 A. I never said anything, and he continued to work in the
3 office, and I was still trying to figure out how to handle
4 it.

5 Q. So you decided after the supposed conversation you were
6 going to allow a DEA agent to continue investigating
7 individuals that you believed was racist?

8 A. I was trying --

9 **MR. COOPER:** Objection. Objection as to the form of
10 that question. Allow, Judge.

11 **THE COURT:** No, overruled.

12 **THE WITNESS:** I was trying to figure out what to do.

13 **BY MR. FOTI:**

14 Q. And you talked to at least one other individual in --
15 that works in Buffalo law enforcement, correct?

16 A. There were the people I just mentioned.

17 Q. Including Shane Nastoff, correct?

18 A. Shane was in Buffalo, the CBP internal affairs officer
19 was in Buffalo. Who else did I mention, Steve Chocksey
20 worked in Buffalo. So there were three.

21 Q. You don't know whether these people believed you or not?

22 A. What -- what do I believe if they believed me? I believe
23 they believed me.

24 Q. Your impression is that they believed you?

25 A. Absolutely.

1 Q. They acted as if they believed you?

2 A. Absolutely.

3 Q. But obviously, if they did believe you, they would have
4 had some responsibility --

5 **MR. COOPER:** Objection.

6 **BY MR. FOTI:**

7 Q. -- to follow up?

8 **MR. COOPER:** Objection.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** Could you repeat that please?

11 **BY MR. FOTI:**

12 Q. If they did believe you, they would have a professional
13 responsibility to follow up, correct?

14 A. If their policy is the same as DEA's, then they would
15 have -- the ones that worked for DEA, the one that wasn't,
16 I'm -- I believe that his policy was probably the same, they
17 should have.

18 Q. You know that every federal law enforcement agency has a
19 responsibility to make sure that they're not guided by
20 racism, correct?

21 A. Of course. Of course.

22 Q. And, obviously, if there's an agent that's involved in
23 investigations in Buffalo, New York that's racist, anybody
24 who is a part of law enforcement would have some obligation
25 to report that, correct?

12:11PM 1 A. If I had said that to him, yes.

12:11PM 2 Q. And if they believed you, they would have had to do
12:11PM 3 something about it, right?

12:11PM 4 A. They would've been -- they would have been responsible --
12:11PM 5 they would have had to have done as well, as far as their
12:11PM 6 policy.

12:11PM 7 Q. As far as you know, nobody ever did?

12:11PM 8 A. I don't believe so.

12:11PM 9 Q. As far as you know, nobody ever has any follow-up
12:11PM 10 conversation with their supervisors or anybody else?

12:11PM 11 A. About what I told them? I have no idea. I have no idea
12:11PM 12 who they spoke to.

12:11PM 13 Q. Okay. So the point in which this -- you officially
12:12PM 14 report that this conversation happened is in August of 2018,
12:12PM 15 correct?

12:12PM 16 A. That was the first time I mentioned it to a DEA
12:12PM 17 supervisor.

12:12PM 18 Q. And you mentioned it to --

12:12PM 19 A. The U.S. Attorney's Office.

12:12PM 20 Q. Yeah. And that was a meeting in regard to a potential
12:12PM 21 conflict that existed, correct?

12:12PM 22 A. It was brought to my attention that -- do you want me
12:12PM 23 to --

12:12PM 24 Q. Without getting into the specifics --

12:12PM 25 A. Sure, sure.

1 Q. -- generally, the meeting was called because there was
2 the potential that a conflict existed?

3 A. That there was a possible conflict.

4 Q. And the potential conflict related to your
5 brother-in-law, correct?

6 A. That he was present.

7 Q. And you were asked about your relationship with him,
8 correct?

9 A. With my wife's brother?

10 Q. During the course of this meeting, you were asked about
11 your relationship with your brother-in-law, correct?

12 A. I really don't remember anything in depth other than that
13 being my brother-in-law, and we don't talk.

14 Q. And you were told at some point that you could no longer
15 continue an investigation into Mr. Gerace, correct?

16 A. Right. Not during that meeting at the U.S. Attorney's
17 Office, but afterwards when I had followup meetings with my
18 resident agent in charge.

19 Q. Okay. During that meeting, though, the conversation
20 comes up or the during the conversation, your
21 brother-in-law's brought up, correct?

22 A. During the one with my resident agent in charge.

23 Q. In August 1st, 2018, the -- during the course of the
24 conversation on August 1st, 2018, your brother-in-law is
25 brought up, correct?

12:13PM 1 A. I'm sorry, I'm not trying to be difficult, I'm trying
12:13PM 2 to --
12:13PM 3 Q. No, that's okay.
12:13PM 4 A. The meeting with my -- with Ed Orgon? Or the one at the
12:13PM 5 U.S. Attorney's Office?
12:13PM 6 Q. Well, let's -- let's go through both.
12:13PM 7 A. Okay.
12:13PM 8 Q. All right. When does -- in one of those meetings, your
12:13PM 9 brother-in-law's name is brought up, correct?
12:13PM 10 A. The one at the U.S. Attorney's Office. The first one.
12:13PM 11 Q. Okay. So the other meeting takes place after you had
12:14PM 12 went to the U.S. Attorney's Office?
12:14PM 13 A. Based on what I told them. I had to meet with my
12:14PM 14 resident agent in charge and supervisor alone.
12:14PM 15 Q. Okay. So I wasn't being clear because there were two
12:14PM 16 meetings on that date. So --
12:14PM 17 A. I don't know if it was the same day, it might have been
12:14PM 18 like the next day.
12:14PM 19 Q. All right. Well, I'm specifically asking about the
12:14PM 20 meeting at the U.S. Attorney's Office on August 1st, 2018.
12:14PM 21 A. Okay.
12:14PM 22 Q. Okay? During the course of that meeting, on August 1st,
12:14PM 23 2018, you -- your brother-in-law's name was brought up,
12:14PM 24 correct?
12:14PM 25 A. It was.

12:14PM 1 Q. Who brought it up, his name up?

12:14PM 2 A. The name of the Assistant U.S. Attorney?

12:14PM 3 Q. Yeah.

12:14PM 4 A. Joe Tripi.

12:14PM 5 Q. Okay. And it was brought up in the context that there
12:14PM 6 could be a potential conflict here, correct?

12:14PM 7 A. Correct.

12:14PM 8 Q. Okay. And did you discuss what happened back in
12:14PM 9 Las Vegas in regards to your brother-in-law?

12:14PM 10 A. We didn't go into specifics. I said are you -- I think
12:14PM 11 it was, are you aware of --

12:14PM 12 **MR. COOPER:** Judge, I'm going to object to hearsay.
12:14PM 13 The contents of this conversation are hearsay.

12:15PM 14 **THE COURT:** Well, the question is: Did you discuss
12:15PM 15 what happened back in Las Vegas in regards to your
12:15PM 16 brother-in-law?

12:15PM 17 You object to that question.

12:15PM 18 **MR. COOPER:** What's happening right now, I'm
12:15PM 19 saying --

12:15PM 20 **THE COURT:** I understand that. He's not -- he's --
12:15PM 21 what I'm pointing out is he's going beyond the question.

12:15PM 22 Do you have a problem with him answering that
12:15PM 23 question?

12:15PM 24 **MR. COOPER:** I'm objecting to hearsay as the answer
12:15PM 25 is hearsay. I'm -- I'm not sure I'm picking up on --

12:15PM 1 **THE COURT:** Okay. So, so, Mr. Casullo, I want you to
12:15PM 2 answer the question that was asked.

12:15PM 3 The question that was asked was, hang on: And did
12:15PM 4 you discuss what happened back in Las Vegas in regards to your
12:15PM 5 brother-in-law?

12:15PM 6 **THE WITNESS:** Okay.

12:15PM 7 **THE COURT:** Yes or no?

12:15PM 8 **THE WITNESS:** Yes, to some extent. Yes, something
12:15PM 9 was said.

12:15PM 10 **THE COURT:** Next question.

12:15PM 11 **BY MR. FOTI:**

12:15PM 12 Q. Something by you?

12:15PM 13 A. That I said to the AUSA.

12:16PM 14 Q. Okay. And it's after this meeting that subsequently
12:16PM 15 you're told that you're no longer going to be involved in the
12:16PM 16 prosecution -- or, the investigation into Mr. Gerace,
12:16PM 17 correct?

12:16PM 18 A. So, after that meeting, I believe it was either the next
12:16PM 19 day, it wasn't the same day I don't think, but the next day I
12:16PM 20 had to meet with Ed Orgon, the resident agent in charge. It
12:16PM 21 was during that meeting that I was told that I was off the
12:16PM 22 Gerace investigation.

12:16PM 23 Q. Okay. Earlier I asked you if there came a time that you
12:16PM 24 learned that your brother-in-law and Peter Gerace were close
12:16PM 25 friends, right?

12:16PM 1 A. Yes.

12:16PM 2 Q. And you -- indicated you did learn that to be the case at
12:16PM 3 some point, correct?

12:16PM 4 A. At some point, I knew. I became aware that they were
12:17PM 5 good friends.

12:17PM 6 Q. Okay. You certainly knew by 2018, right?

12:17PM 7 A. Yes.

12:17PM 8 Q. So when these conversations are happening, you're aware
12:17PM 9 of the relationship between your brother-in-law and Peter
12:17PM 10 Gerace, correct?

12:17PM 11 A. Yes.

12:17PM 12 Q. Okay. And on direct, you testified that your
12:17PM 13 brother-in-law's no longer allowed to even come by the house,
12:17PM 14 correct?

12:17PM 15 A. He hasn't been for a couple years. And he tried to come
12:17PM 16 once, and I told my wife he can't be here. And that was a
12:17PM 17 couple years ago. It was actually during Thanksgiving.

12:17PM 18 Q. During Thanksgiving of -- you said a couple years ago,
12:17PM 19 after the --

12:17PM 20 A. It could have been three years ago, I can't remember. It
12:17PM 21 was at least two, maybe three.

12:17PM 22 Q. Post COVID?

12:17PM 23 A. I don't remember.

12:17PM 24 Q. Okay. All right. When did your brother-in-law move back
12:17PM 25 to Buffalo?

1 A. So sometime while I was working in New York City, which
2 was -- so I got to New York City in December of 2013.

3 Shortly after that, I think he moved back to Buffalo for a
4 couple of months, which was around 2014.

5 Q. So after you leave Las Vegas, he moves after that?

6 A. Yes. When I went to New York City, he moved back to
7 Buffalo for a short period of time.

8 Q. Okay. Now, I've been alluding to something that happened
9 with him back in Las Vegas, and you said you know what I'm
10 referring to, right?

11 A. Yes.

12 Q. And that was --

13 **MR. COOPER:** Objection. I'd ask that we come up.

14 **THE COURT:** Come on up.

15 (Sidebar discussion on the record.)

16 **MR. COOPER:** Judge, it's my understanding that
17 there's a pretrial ruling that circumscribes the extent to
18 which this topic is going to be covered during the course of
19 the trial.

20 **THE COURT:** Yeah, I remember vaguely.

21 **MR. COOPER:** Well, that's what I want to conference,
22 and so I'm not.

23 **MR. FOTI:** I only, remember vaguely with him saying
24 it, but I -- whatever the analysis was back then, I think it's
25 been established that there's a close relationship in 2000 --

1 that he's aware of in 2018 when he's making these allegations
2 regarding Phil, his brother-in-law, and Peter Gerace, and any
3 history that -- where he is professionally reprimanded with
4 regards to -- to one of Peter's close friends is relevant. It
5 goes to bias.

6 **THE COURT:** Because?

7 **MR. FOTI:** Because it -- it potentially influences a
8 bias that he would have against any of Phil's friends,
9 including Peter Gerace.

10 **THE COURT:** Yeah, why not, Mr. Cooper?

11 **MR. COOPER:** Judge, because he's spent a lot more
12 time with this issue other than the 30 seconds that we've been
13 up here. We -- I believe this was briefed, it was argued.
14 And what the ultimate determination that the Court made was
15 that there could be cross-examination, my best recollection of
16 it is cross-examination indicating in sum and substance your
17 brother-in-law caused problems for you when you were out in
18 Las Vegas and that that was it. And that you weren't getting
19 into discipline. You're not allowing questioning into
20 potential discipline or underlying facts.

21 **THE COURT:** This is starting to come back to me now.
22 So -- so why can't you ask, did your brother-in-law cause
23 problems for you that created issues professionally for you
24 when you were in Las Vegas?

25

12:20PM 1 **MR. FOTI:** Well, I guess as a preliminary point, was
12:20PM 2 that in regards to -- did we brief that? I don't remember
12:20PM 3 briefing that. Or was that Bongiovanni?

12:20PM 4 I think that was an analysis associated with
12:20PM 5 Mr. Bongiovanni. It doesn't have the same friendship with
12:20PM 6 Phil, so my argument would be different than it would be if we
12:20PM 7 were in the Bongiovanni case.

12:20PM 8 **MR. COOPER:** I think it's the exact same argument
12:20PM 9 because Bongiovanni is in --

12:20PM 10 Well, this is my position, you have your position.
12:20PM 11 It's the exact same argument.

12:20PM 12 Because Bongiovanni is in a conspiracy with Gerace,
12:20PM 13 the Bongiovanni attorneys wanted to make the exact same
12:21PM 14 argument.

12:21PM 15 **THE COURT:** Was this -- was this a pretrial ruling in
12:21PM 16 Bongiovanni?

12:21PM 17 **MR. COOPER:** Correct. It's in Bongiovanni. I don't
12:21PM 18 recall it being --

12:21PM 19 **MR. TRIPI:** You -- you chimed in, you -- you gave
12:21PM 20 them the transcript from the rulings that you had and allowed
12:21PM 21 them to brief anything further.

12:21PM 22 And I'm not being critical, they didn't brief it
12:21PM 23 further, so I feel like this is a lot to put on the Court in
12:21PM 24 this moment. If it's going to be a whole --

12:21PM 25 **THE COURT:** This isn't the first time that's

12:21PM 1 happened.

12:21PM 2 **MR. TRIPI:** I'm not trying to be critical of anybody,
12:21PM 3 okay? Everyone's advocating.

12:21PM 4 But -- but there's a lot of history here. Because,
12:21PM 5 in other words, in the Vegas situation as I recall the
12:21PM 6 records, I haven't looked at them in a while, but there's a --
12:21PM 7 there's a referral, it's the issue with an undercover, right?

12:21PM 8 **THE COURT:** Issue of --

12:21PM 9 **MR. TRIPI:** Just maybe if I state some facts it will
12:21PM 10 trigger a memory. But Casullo in 2003 or '4, whatever it is,
12:21PM 11 he's in Las Vegas, he's at a bar, there's an undercover
12:21PM 12 operation going on, they're with his brother-in-law, and
12:22PM 13 there's that sequence of phone calls that leads the agent with
12:22PM 14 the FBI to believe that Casullo might have, like, tipped off
12:22PM 15 or whatever.

12:22PM 16 **THE COURT:** Yeah.

12:22PM 17 **MR. TRIPI:** So then there's an investigation that was
12:22PM 18 triggered.

12:22PM 19 **THE COURT:** Yeah, I know.

12:22PM 20 **MR. TRIPI:** Ultimately, there's no -- there's no,
12:22PM 21 find -- this is something that if he did that, he would have
12:22PM 22 been fired and prosecuted for it.

12:22PM 23 **THE COURT:** Yes.

12:22PM 24 **MR. TRIPI:** So there was no finding.

12:22PM 25 **THE COURT:** Right.

1 **MR. TRIPI:** So this is -- there was -- there was some
2 investigation. I don't remember if there was, like, a letter
3 of reprimand or anything like that. I don't remember.

4 But certainly later on in life, and we argued this to
5 you before, he then -- Casullo works for the FBI, works with
6 the FBI, and in fact later works in the task force here in the
7 FBI where it's led by a guy who was back in Las Vegas who knew
8 the circumstances at the time.

9 **THE COURT:** Yeah. But -- let's get back to, so, so
10 the point you want to make is that the brother-in-law caused
11 problems for him in Las Vegas, right?

12 **MR. FOTI:** Yeah, I think -- I think I want -- I do
13 want to get -- well, there's something that Eric wanted to
14 add.

15 **MR. SOEHNLEIN:** I'm sorry, I just wanted, with
16 respect to -- I'm soft spoken.

17 With respect to the timeline, I just want to note
18 that whatever the pretrial ruling was, the pretrial analysis,
19 our final pretrial conference where we argued this was
20 October 25th. The documents were disclosed to us
21 October 30th. After that pretrial conference when we got an
22 email for who would be the initial witnesses in the trial is
23 when we got disclosure on this issue. Just to set the table.

24 **MR. FOTI:** And Mr. Tripi's not -- I mean, saying that
25 that -- that we erred in some way, but that is true.

12:23PM 1 **THE COURT:** Talk about the issue. Talk about the
12:23PM 2 issue.

12:23PM 3 **MR. FOTI:** In terms of the issue, Judge, I do think
12:23PM 4 the extent matters. Saying you were reprimanded can mean
12:23PM 5 almost -- it doesn't mean anything. It means a supervisor
12:23PM 6 could -- could say --

12:23PM 7 **THE COURT:** Okay. We've got to break. We can't --
12:23PM 8 we can't do this now. We're going to break for lunch. I've
12:23PM 9 got a 12:30, we'll come back at 1 and do this.

12:24PM 10 **MR. TRIPI:** Can I also make two other brief record
12:24PM 11 things?

12:24PM 12 **THE COURT:** Yeah, about this?

12:24PM 13 **MR. TRIPI:** Generally about this subject. But we --
12:24PM 14 so, obviously I was -- I was in a meeting that you just
12:24PM 15 crossed about --

12:24PM 16 **THE COURT:** Yeah.

12:24PM 17 **MR. TRIPI:** -- with the supervisor. Just by way of
12:24PM 18 disclosure. He -- his recollection controls, but -- and he
12:24PM 19 testified that we brought this issue up in that meeting.

12:24PM 20 I will, I initially brought it up with his
12:24PM 21 supervisor, not with him.

12:24PM 22 And then I used the police report that lists Phil
12:24PM 23 Domiano on it initially with him to say the situation is too
12:24PM 24 close.

12:24PM 25 His supervisors followed up probably in the manner he

1 recalls. But I just want to be clear to the extent I was
2 there, and if it went a little bit different, I want to let
3 you know.

4 **THE COURT:** Um-hmm.

5 **MR. FOTI:** I think it said it in one of the
6 memorandums, I think.

7 **MR. TRIPI:** So, you know, I'm just sitting there, I'm
8 hearing it, and it's a little bit different than I recall it.
9 So I just wanted to make sure to cover the sequence.

10 And then at some point, I don't think this is in any
11 formal interview or whatever, at some point when these events
12 were occurring, you can imagine there were a lot of back and
13 forth between various members of the U.S. Attorney's Office,
14 DEA and DEA agents.

15 At one point I recall having a conversation with
16 Shane Nastoff, and that's information in my brain that he's
17 asking these questions. Nastoff indicated to me that he
18 learned the information closer in time -- he believed he
19 learned the information closer in time to when DEA management
20 did. The timing of it wasn't Mark's question. I think the
21 timing of it was -- was, you know, who did you tell.

22 **MR. FOTI:** Yeah.

23 **MR. TRIPI:** But I think that, you know, I think that
24 Nastoff would say I believe I learned it around the time
25 management did. So, you have that now.

25 | And you're not to talk to anyone during the break --

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THE WITNESS: Yes, Judge.

THE COURT: -- about this case, obviously.

THE WITNESS: Yes, Judge.

(Witness excused at 12:27 p.m.)

THE COURT: Let's wait until he leaves.

So, we'll come back at 1 to talk about the issue that we were just talking about. I'm gonna want to see what you want to get into. And I'll want to know the extent you want to get into it.

MR. FOTI: Sure.

THE COURT: And -- and why. And then we'll, we'll revisit this issue.

MR. TRIPI: Yeah. My -- I think you -- I think we made initially an ex parte, you ordered disclosures, so I'll go back and look at those materials.

THE COURT: Yeah, please.

MR. TRIPI: Yeah.

THE COURT: Great. Okay? See you all.

Anything else that we need to do before we break from the defense?

MR. SOEHNLEIN: I don't think so, no.

THE COURT: Okay. From the government?

MS. CHALBECK: No, Judge.

THE COURT: All right, terrific. Okay. We'll see you at 1.

2 (Off the record at 12:28 p.m.)

| | |
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| 4 | (Jury not present.) |
|---|---------------------|

6 | **THE COURT:** Please be seated.

8 | continuation of the jury trial in case number 19-cr-227 and

10 All counsel and parties are present.

13 This is a little different than the Bongiovanni case,
14 and I do think there -- there may be room for the defense to
15 get into a little bit more.

16 I don't think the details of what happened in
17 Las Vegas are fair game because I don't think the details add
18 anything.

19 But perhaps -- so tell me, what was the -- what was
20 the result? Was there a reprimand? What was it?

21 **MR. TRIPI:** I just reviewed it. I can hand it up to
22 you, too, Judge. But it was ultimately -- there was a letter
23 of reprimand that he used poor judgment. And it was based
24 upon the -- the end result was a letter of reprimand for poor
25 judgment. The lynchpin of the analysis essentially was that

01:07PM 1 he was complaining loudly to his wife about his P-O-S
01:07PM 2 brother-in-law --

01:07PM 3 **THE COURT:** Right.

01:07PM 4 **MR. TRIPI:** -- and why he was with an undercover.

01:07PM 5 **THE COURT:** Right.

01:07PM 6 **MR. TRIPI:** And the mother overheard --

01:07PM 7 **THE COURT:** Overhead it.

01:07PM 8 **MR. TRIPI:** -- and made a phone call.

01:07PM 9 **MR. COOPER:** And so, Judge, if we -- if you're
01:07PM 10 allowing the letter of reprimand in, which I don't think is
01:07PM 11 probative of his truthfulness in any way, and I don't think it
01:07PM 12 goes to any bias that he has, if you allow that in, then I
01:07PM 13 think I would kind of be required in order to explain to the
01:07PM 14 jury that there's an innocent explanation for all this and
01:07PM 15 what that is.

01:07PM 16 And it kind of becomes this trial within a trial.
01:07PM 17 Because then he's recrossed on those facts that I've
01:07PM 18 directed -- redirected him on.

01:07PM 19 **THE COURT:** Yeah, I -- I'm not, I'm not inclined to
01:07PM 20 let that in. But the fact that he received a reprimand, I am
01:07PM 21 inclined to let in.

01:07PM 22 **MR. COOPER:** But I guess my concern there then,
01:07PM 23 Judge, is that I -- if you're not inclined to let the
01:08PM 24 underlying facts in, it makes it sound worse than it is.
01:08PM 25 Because --

01:08PM 1 **THE COURT:** Oh, I don't think so. I don't think so.
01:08PM 2 It's a reprimand. It's not a -- it's not a -- it's not
01:08PM 3 anything else.

01:08PM 4 Is there anything more -- but let me -- let me just
01:08PM 5 ask this. Is there anything more that you think you should be
01:08PM 6 allowed to go into?

01:08PM 7 **MR. FOTI:** No. No. I think the reality is for the
01:08PM 8 purposes of what we want to get into it for, the letter of
01:08PM 9 reprimand covers. I don't think the underlying facts make a
01:08PM 10 difference.

01:08PM 11 I think the underlying facts may ultimately bear on
01:08PM 12 his credibility in some way, but not in a way that I think.

01:08PM 13 **THE COURT:** So -- so let me ask the government this
01:08PM 14 then. Is there a way to get in that there was some
01:08PM 15 employment-related action taken that would solve your problem
01:08PM 16 with the word "reprimand?"

01:08PM 17 I mean, I think a reprimand is just such a -- such a
01:08PM 18 mild sanction, but -- but, I mean, is there some -- is there
01:08PM 19 some -- I mean, so -- so if he said there was a job-related
01:09PM 20 sanction, I think that'd be worse, right? I think that would
01:09PM 21 be worse than a reprimand.

01:09PM 22 But, but I'm open to discussion about whether there
01:09PM 23 is a way to phrase it in -- in a different way that allows the
01:09PM 24 jury --

01:09PM 25 So the reason is, because -- because Gerace is

1 friends -- is such good friends with this guy, it's different
2 than Bongiovanni. It's different. The bias that results from
3 what Domiano does to Casullo is different against Mr. Gerace
4 than it is against Mr. Bongiovanni. It's a different --
5 it's -- it's a difference of kind in the bias that he might
6 have. And so I -- and so for that reason, I think that
7 there's a little bit, not a lot, but a little bit more the
8 defense is entitled to do in this case than it was in
9 Bongiovanni.

10 **MR. COOPER:** Can we confer for a moment?

11 **THE COURT:** Absolutely.

12 **MR. COOPER:** Judge, what we just discussed is if the
13 Court is inclined to allow defense counsel to question about
14 the existence of a letter of reprimand related to Domiano and
15 Casullo's, you know, familial relationship with that person,
16 what we would request is the ability on redirect in a leading
17 fashion to elicit from the witness, isn't it true, sir, that
18 that letter of reprimand was related to you complaining about
19 the associations that your brother-in-law had out loud in
20 front of your wife? Like, it needs to -- from our position,
21 if the letter of reprimand comes up in association with
22 Casullo in a vacuum, and no additional facts are offered,
23 that's -- I -- I view that as very prejudicial to the
24 government.

25 **Because I know Mr. Foti and Mr. Soehnlein are good**

01:11PM 1 advocates, and they're going to use the -- the absence of
01:11PM 2 information surrounding that in an effective way for their
01:11PM 3 client. The actual facts --

01:11PM 4 **THE COURT:** Let me ask the defense: Do you object to
01:11PM 5 the facts of this getting in?

01:11PM 6 **MR. FOTI:** I don't object to the facts if we're
01:12PM 7 talking about the full universe of facts.

01:12PM 8 **THE COURT:** Right. Okay.

01:12PM 9 **MR. FOTI:** Yeah.

01:12PM 10 **THE COURT:** So if you do that, I'll let them get into
01:12PM 11 everything.

01:12PM 12 **MR. TRIPI:** Well, that's -- that's -- I guess that's
01:12PM 13 what we're talking about, Judge.

01:12PM 14 If -- if on -- on the reprimand piece, I think that a
01:12PM 15 limited amount of redirect should be permitted then to mete
01:12PM 16 that without opening the door to the whole underlying
01:12PM 17 consolation of facts because --

01:12PM 18 **THE COURT:** I think -- I think -- I think you can
01:12PM 19 have it one of two ways, Mr. Tripi. I think you can -- you
01:12PM 20 can leave it at reprimand, or we can talk about the whole kit
01:12PM 21 and caboodle.

01:12PM 22 But I -- but I -- I don't think you can slice it so
01:12PM 23 thin that you get to put the facts about it in that you want
01:12PM 24 to put in and not have the defense put everything in. So, so
01:12PM 25 I'll leave that to you.

1 But -- but -- so, they can get into the fact that
2 there was a reprimand. If you open the door on redirect with
3 the facts of the reprimand, I'm going to let them get into
4 everything with respect to the reprimand. And it's just
5 gonna -- I think it will be a tremendous waste of time. But
6 if you want to do that, we'll do it.

7 **MR. TRIPI:** I -- we get into -- we start getting into
8 403, that's our -- that's our argument for why the reprimand
9 doesn't come in.

10 **MR. FOTI:** And, Judge, if they want to -- look, I
11 think the -- if they want to on redirect get into sort of the
12 minimal impact of a reprimand, I'm not gonna argue that that
13 opens the door to anything or that's improper.

14 **THE COURT:** Right. I think that's right.

15 **MR. FOTI:** But obviously, if they get into the
16 underlying facts, then yes.

17 **THE COURT:** I think that's right. I think, you know,
18 is a reprimand the least -- the -- the least serious form
19 of -- of --

20 **MR. COOPER:** Can we have one second?

21 **THE COURT:** Something along those lines.

22 **MR. TRIPI:** Judge, I'm going to read from the letter
23 if I may.

24 **THE COURT:** Go ahead.

25 **MR. TRIPI:** The -- it says that the -- proposed

1 issue, a letter of reprimand based on the charge of poor
2 judgment.

3 And that poor judgment wasn't associating with
4 Domiano or anything like that. That poor judgment was limited
5 to the decision to speak in an unauthorized place, his
6 residence, about matters --

7 **THE COURT:** Involving Domiano?

8 **MR. TRIPI:** Yeah.

9 **THE COURT:** And so, I guess what I'm saying is, if --
10 if there's cross about you received a letter of reprimand for
11 poor judgment, just cabining the redirect to did that letter
12 of reprimand -- because they didn't find all those other
13 things, all the underlying things. They didn't find he did
14 anything wrong other than making the decision to speak in a
15 place he shouldn't have been speaking about work, about
16 Domiano.

17 And so, in a very tight fashion, just like reprimand
18 is tight, I think there's a way to craft a direct -- a
19 redirect that, of course, that you have signed off on in
20 advance, that doesn't open the door to everything, that
21 strikes a proper balance.

22 **THE COURT:** Mr. Foti may agree with that, but -- but
23 you -- you do it at your own risk.

24 So -- so, you know, it sounds to me like Mr. Foti
25 is -- is agreeing with that.

01:17PM 1 If you guys want to talk about how far you can go
01:17PM 2 and -- and Mr. Foti will tell you what -- what his recross
01:17PM 3 would be, fine. But I'm telling you that I think that you may
01:17PM 4 be opening a door by doing that sort of redirect. I
01:17PM 5 think -- I think you can do a redirect on how -- how benign a
01:18PM 6 penalty a reprimand is. I don't think there's anything that
01:18PM 7 would open any doors with respect to that. That it's, you
01:18PM 8 know, the least -- I think it probably is the least serious
01:18PM 9 sanction that can be imposed.

01:18PM 10 **MR. TRIPI:** Because they went through the Douglas
01:18PM 11 factors. It says serious with no malicious intent; prior to
01:18PM 12 disciplinary record, none; effect on offense on ability to
01:18PM 13 perform job, no trust issues with management; consistency with
01:18PM 14 other penalties, consistent; consistency with agency penalty
01:18PM 15 guideline, consistent; notoriety of defense, minimal;
01:18PM 16 potential for rehabilitation, excellent, based on prior work
01:18PM 17 record and remorse of actions.

01:18PM 18 **THE COURT:** I think you can get into that.

01:18PM 19 **MR. TRIPI:** So --

01:18PM 20 **THE COURT:** That doesn't sound -- that doesn't sound
01:18PM 21 like that would open any doors.

01:18PM 22 Mr. Foti, do you agree with that?

01:18PM 23 **MR. FOTI:** Yeah, I don't think that gets into any
01:18PM 24 underlying facts.

01:18PM 25 **THE COURT:** Okay. As long as you don't get into the

01:18PM 1 facts. If you get into the facts, you're opening the door to
01:19PM 2 the facts.

01:19PM 3 **MR. TRIPI:** Understood.

01:19PM 4 **THE COURT:** Okay? Okay.

01:19PM 5 Anything else we need to do? I'm--

01:19PM 6 **MR. COOPER:** Yes.

01:19PM 7 **THE COURT:** -- gonna take another break.

01:19PM 8 Go ahead.

01:19PM 9 **MR. COOPER:** Sorry. Thank you. I think we just need
01:19PM 10 to let him know, because we've had -- this is a different
01:19PM 11 ruling than the two times he's previously testified, so I
01:19PM 12 think the Court just needs to let the witness know outside the
01:19PM 13 presence of the jury that there's gonna be cross on this
01:19PM 14 different from the last proceeding.

01:19PM 15 **THE COURT:** Um-hmm.

01:19PM 16 **MR. COOPER:** And -- and that it's -- it's gonna be in
01:19PM 17 a manner that's just a yes or no, I hope, you know, to -- to
01:19PM 18 not open the door on their end to facts that shouldn't come
01:19PM 19 in.

01:19PM 20 **THE COURT:** And we're not going to get into the facts
01:19PM 21 of what happened.

01:19PM 22 **MR. COOPER:** Yeah.

01:19PM 23 **THE COURT:** Yep. Okay. I'm happy to do that.

01:19PM 24 Any objection from the defense to my doing that?
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MR. FOTI: No, Judge.

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THE COURT: Great.

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MR. FOTI: I -- it's really just going to be a couple

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questions based on the --

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THE COURT: Yep.

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MR. FOTI: -- way that we've --

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THE COURT: Yeah. Great. Terrific.

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Okay. Is he available? Can we bring him in?

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MR. COOPER: Yeah.

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THE CLERK: Judge, before we get that, we have a note

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from Pat.

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THE COURT: Oh. So the jury has asked what the term

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"proffer" means.

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MR. FOTI: Oh, I can --

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THE COURT: Another one of those words.

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MR. FOTI: I can cover it with a question or two,

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Judge.

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THE COURT: Do you? You have some questions that

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might clear it up?

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MR. FOTI: Well, yeah. I could cover it right -- or,

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either way. You could advise -- I'm fine with you advising

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the jury, or I can ask him, and if you feel like he still

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needs to be advised then --

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THE COURT: Yeah, why don't you ask some questions on

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it, and we can fix it.

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MR. FOTI: Okay.

THE COURT: Okay. It's funny, you know, words that are second nature to all of us --

MR. FOTI: Yeah.

THE COURT: -- lots of people don't understand.

(Anthony Casullo seated at 1:20. Jury not present.)

THE COURT: Okay. You can sit, Mr. Casullo.

So we're here with Mr. Casullo, but none of the jurors present. And I've just made a ruling, Mr. Casullo, that is a little different than the ruling in the Bongiovanni trials. And that is that the defendant -- the defense counsel is going to be able to cross-examine you with the fact that you received a reprimand for exercising poor judgment when you were in Las Vegas.

But they can't get into the facts of that in any way. And the government is not going to get into the facts of that in any way. The government may ask you if a reprimand is the least severe sanction you can get. They may get into some of the findings that -- not the factual findings, but some of the standards for a reprimand as opposed to more serious sanctions, but not the facts.

So when you answer, just yes-or-no answers. And don't try to explain with the facts of what is -- of what happened out there. Okay?

THE WITNESS: Okay, Judge.

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THE COURT: Okay?

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MR. COOPER: Just to add to that, Judge.

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THE COURT: Go ahead.

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MR. COOPER: I expect the defense will ask if you

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received a letter of reprimand, and if that was related to

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Mr. Domiano.

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THE COURT: Yes, of course. Yes.

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MR. COOPER: And just yes or no to the --

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THE COURT: Yeah, the fact -- the fact that it was

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related, I mean, that's why I'm allowing them to ask about it,

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because it was related to the brother-in-law.

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But -- but, again, not the facts. I don't want the

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facts to go beyond that. It was a letter of reprimand, it was

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related to your brother-in-law.

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THE WITNESS: Okay, Judge.

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THE COURT: Okay? Got it?

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THE WITNESS: Yes.

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THE COURT: Great. Okay.

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Anything else, folks?

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MR. FOTI: No.

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THE COURT: Okay. And -- and Mr. Foti's probably

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going to ask you, the jury doesn't know what the word

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"proffer" meant. So -- so Mr. Foti's going to try to ask you

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some questions to follow up on Mr. Cooper's direct examination

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about what a proffer is.

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THE WITNESS: Okay, Judge.

THE COURT: Okay? Great.

THE WITNESS: Sounds good.

THE COURT: Okay. Good. Thanks, everybody.

THE CLERK: All rise.

(Off the record at 1:22 p.m.)

(Back on the record at 1:29 p.m.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Please be seated.

THE CLERK: We are back on the record for the
continuation in the jury trial in case numbers 19-cr-227 and
23-cr-37, United States of America versus Peter Gerace, Jr.
All counsel and parties are present.

THE COURT: Okay. Colleen tells me I left rather
abruptly, I didn't mean to. I've got a lot of things on my
mind, and I'm juggling a lot of different things. So I
apologize if I was rude when I left the -- the bench.

THE CLERK: I didn't say he was rude.

THE COURT: She didn't say rude, but she just said.

THE CLERK: I said you usually ease out, like, okay,
the jury will be back at 1:30.

MR. SOEHNLEIN: I thought you exited with gusto,
Your Honor.

THE COURT: What's that? I'm sorry?

01:30PM

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MR. SOEHNLEIN: I thought you left with gusto.

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THE COURT: Thank you. I just, you know, I've got a

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lot of balls in the air right now, and they're all coming

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crashing down at once, so --

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Anything else we need to do before we bring the

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witness back and the jury back?

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MR. COOPER: Nothing from us, Judge. Thank you.

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THE COURT: Great. Terrific.

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9

Okay. So let's bring the witness back, and let's

01:30PM

10

bring the jury back.

01:32PM

11

(Witness and Jury seated at 1:32 p.m.)

01:32PM

12

THE COURT: The record will reflect that all our

01:32PM

13

jurors are, again, present.

01:32PM

14

I remind the witness he's still under oath.

01:32PM

15

And you may continue the cross.

01:32PM

16

MR. FOTI: Thank you, Judge.

01:32PM

17

BY MR. FOTI:

01:32PM

18

Q. Okay. Good afternoon again, sir.

01:32PM

19

A. Good afternoon.

01:32PM

20

Q. I'm going to shift gears briefly here from where we left

01:33PM

21

off, ask about something else that you talked about on

01:33PM

22

direct.

01:33PM

23

You indicated that before you were no longer permitted to

01:33PM

24

participate in this investigation, you had participated in a

01:33PM

25

number of investigative steps, correct?

01:33PM

1 A. Yes.

01:33PM

2 Q. Okay. And you testified on direct about having

01:33PM

3 participated in what was referred to as proffers, correct?

01:33PM

4 A. Correct.

01:33PM

5 Q. Okay. Now a proffer is generally a meeting with somebody

01:33PM

6 who is believed -- between law enforcement and somebody who

01:33PM

7 it's believed may have information that law enforcement's

01:33PM

8 interested in, right?

01:33PM

9 A. Correct.

01:33PM

10 Q. Sometimes it's a person who's been charged with a crime?

01:33PM

11 A. True.

01:33PM

12 Q. Sometimes it's a target of an investigation?

01:33PM

13 A. Yes.

01:33PM

14 Q. Sometimes it is a witness who hasn't even been

01:33PM

15 categorized as something as significant as a target, right?

01:33PM

16 A. True.

01:33PM

17 Q. Sometimes there's agreements in place as to how the

01:33PM

18 information can be used after the proffer, correct?

01:33PM

19 A. Yes.

01:33PM

20 Q. The point is, if there's a proffer that takes place,

01:34PM

21 you're gonna have law enforcement present, right?

01:34PM

22 A. Yes.

01:34PM

23 Q. And you're gonna have at least one person that they're

01:34PM

24 interested in interviewing, correct?

01:34PM

25 A. Correct.

01:34PM 1 Q. And proffers may be helpful in terms of gathering
01:34PM 2 information that law enforcement's looking for, right?
01:34PM 3 A. Right.
01:34PM 4 Q. Some proffers go absolutely nowhere, right?
01:34PM 5 A. True.
01:34PM 6 Q. And you said that you had participated in a number of
01:34PM 7 proffers related to this investigation, correct?
01:34PM 8 A. I believe it was just one.
01:34PM 9 Q. Just the one proffer?
01:34PM 10 A. Correct.
01:34PM 11 Q. And that's what you were referring to, right?
01:34PM 12 A. Yes.
01:34PM 13 Q. Okay. I'm gonna briefly talk to you about this last
01:34PM 14 conversation you talked about on direct involving
01:34PM 15 Mr. Bongiovanni. That was a conversation primarily about
01:34PM 16 Anthony Gerace, correct?
01:34PM 17 A. The last conversation we had.
01:34PM 18 Q. The last conversation with Mr. Bongiovanni was about
01:35PM 19 Anthony Gerace, right?
01:35PM 20 A. When he came over to my desk, is that what we're talking
01:35PM 21 about?
01:35PM 22 Q. Yes.
01:35PM 23 A. Yes.
01:35PM 24 Q. Okay. And you said he made a number of comments that
01:35PM 25 sort of downplayed the significance of marijuana; is that

01:35PM 1 fair?

01:35PM 2 A. Just that last comment.

01:35PM 3 Q. About you better prosecute him before it's made legal?

01:35PM 4 A. You better hurry up and arrest him before they make

01:35PM 5 marijuana legal.

01:35PM 6 Q. I think on direct you made a comment along the lines of

01:35PM 7 you hadn't really heard anything like that from another agent

01:35PM 8 during the entirety of your career, correct?

01:35PM 9 A. Correct.

01:35PM 10 Q. And that's what you interpreted as an attempt by

01:35PM 11 Mr. Bongiovanni to have some influence over your

01:35PM 12 decisionmaking in the investigation?

01:35PM 13 A. That's how I perceived it.

01:35PM 14 Q. Okay. And when was this that this -- this conversation

01:35PM 15 took place, time-wise? Date-wise?

01:35PM 16 A. I think it was -- I can't remember if it was the end of

01:35PM 17 the summer of '18 or beginning of '19. I think it was -- it

01:36PM 18 would have been the summer of '18. Like, August of '18,

01:36PM 19 right around that time period.

01:36PM 20 Q. Okay.

01:36PM 21 A. I believe, I could be wrong, it could be January of '19.

01:36PM 22 Q. Okay. The point that I'm ultimately getting to here is

01:36PM 23 the laws in regard to marijuana across the country had

01:36PM 24 shifted significantly in 2018 or 2019, from where they were

01:36PM 25 when you started at the DEA, correct?

01:36PM 1 A. Federally, or --

01:36PM 2 Q. I'm talking about laws in different jurisdictions across
01:36PM 3 the country, there had been significant changes, right?

01:36PM 4 A. To the best of my knowledge, not federally. I know in
01:36PM 5 different states, different things change. But not
01:36PM 6 federally.

01:36PM 7 Q. Oh, sure. In terms of federal law, marijuana has
01:36PM 8 generally remained criminalized, correct?

01:36PM 9 A. Correct.

01:36PM 10 Q. But by 2018, 2019, there was a shift in the states where
01:36PM 11 a number of states were beginning to legalize marijuana,
01:36PM 12 correct?

01:37PM 13 A. I would agree with that.

01:37PM 14 Q. Or at least decriminalize it, and maybe make it less
01:37PM 15 severe, the sanctions that were imposed?

01:37PM 16 A. Correct.

01:37PM 17 Q. And even on a federal level, it was known to you that
01:37PM 18 there was at least conversations about policy related to the
01:37PM 19 legalization of marijuana at that point, correct?

01:37PM 20 A. I don't know if it was so much about the legalization,
01:37PM 21 but the reclassification of marijuana, being classified as a
01:37PM 22 Schedule I, the most dangerous, to a different schedule, is
01:37PM 23 was what my knowledge was of the discussions with the federal
01:37PM 24 level, within DEA.

01:37PM 25 Q. Okay. Within the organization that you were employed by?

01:37PM 1 A. The organization, before Congress, from our
01:37PM 2 administrator, different things that I read and saw, things
01:37PM 3 like that.

01:37PM 4 Q. So in terms of your experience with the DEA, you knew
01:37PM 5 there were ongoing conversations about at least the
01:37PM 6 classification of marijuana scheduling?

01:37PM 7 A. To change the classification.

01:37PM 8 Q. And when you talk about scheduling, you're talking about
01:37PM 9 sort of the category of severity of --

01:37PM 10 A. Of seriousness.

01:37PM 11 Q. Yeah. It relates to addictiveness, addictive quality
01:38PM 12 of -- of the drug, right?

01:38PM 13 **MR. COOPER:** I would object to relevance at this
01:38PM 14 point.

01:38PM 15 **THE COURT:** Yeah, sustained.

01:38PM 16 **BY MR. FOTI:**

01:38PM 17 Q. So, in any event, the conversation you have with
01:38PM 18 Mr. Bongiovanni, it occurs at a time where at least state, in
01:38PM 19 certain states, legalization had begun to occur?

01:38PM 20 A. To the best of my knowledge, yes.

01:38PM 21 Q. And -- and do you know when marijuana was -- obviously,
01:38PM 22 you're a federal agent, but do you know when marijuana was
01:38PM 23 decriminalized in New York?

01:38PM 24 A. No.

01:38PM 25 Q. Okay. In any event, 2018, 2019, the -- at least the

1 state laws on marijuana had shifted from where they were in
2 the '90s?

3 A. From the '90s, yes.

4 Q. And -- and they -- the shift had been shifting at that
5 point from where you -- where the laws on marijuana were
6 during the majority of your career, correct?

7 A. I was more familiar with the Nevada State law than the
8 New York State law. But within the State of Nevada, it had
9 shifted. And I was aware of it shifting in New York State,
10 as well, and several other states from just reading open
11 source news stories.

12 Q. Okay. While you were in Nevada, you were -- you were in
13 the DEA office in Las Vegas, correct?

14 A. I was.

15 Q. Okay. And I'm going to ask you a couple of specific
16 questions. Just in terms of background, I think we covered
17 some of this. But when you moved out to Las Vegas, your
18 brother-in-law Phil Domiano, I don't know why I just suddenly
19 had trouble pronouncing that, he was already living out
20 there, right?

21 A. He was.

22 Q. Okay. And some point after you moved out there, you
23 joined the DEA field office for the, in Las Vegas, correct?

24 A. Started July of '99 with DEA in Las Vegas.

25 Q. And while you were --

01:39PM 1 A. I'm sorry. I'm sorry. It was December '99 that I
01:40PM 2 arrived in Vegas.

01:40PM 3 Q. Okay. Thank you for the clarification.

01:40PM 4 While you're at that office, at some point after that,
01:40PM 5 there came -- did there come a time that you received a
01:40PM 6 letter of reprimand?

01:40PM 7 A. Yes.

01:40PM 8 Q. Okay. And that was a letter of reprimand based on a
01:40PM 9 charge of poor judgment, correct?

01:40PM 10 A. It was a charge of poor judgment, yes.

01:40PM 11 Q. And the charge that was referenced in that letter was in
01:40PM 12 reference to or was related to your brother-in-law, Phil
01:40PM 13 Domiano?

01:40PM 14 A. Yes.

01:40PM 15 **MR. FOTI:** Can I just have a minute Judge?

01:41PM 16 All right. Thank you, sir. Nothing further at this
01:41PM 17 time.

01:41PM 18 **THE COURT:** Redirect?

01:41PM 19 **MR. COOPER:** Yeah, just briefly, Judge, please.

01:41PM 20

01:41PM 21 **REDIRECT EXAMINATION BY MR. COOPER:**

01:41PM 22 Q. On that last topic first, let's hit that.

01:41PM 23 Do you recall what year that letter of reprimand was
01:41PM 24 from?

01:41PM 25 A. I believe when I received the actual letter of reprimand

01:41PM 1 may have been 2004, 2005.

01:41PM 2 Q. 2004 or 2005?

01:41PM 3 A. Yes.

01:41PM 4 Q. Okay. So is that about ten years before you move back to

01:41PM 5 Buffalo?

01:41PM 6 A. Yes. Yeah.

01:42PM 7 Q. Okay.

01:42PM 8 A. Yeah, at least. At least ten.

01:42PM 9 Q. Okay. Ten or more; is that right?

01:42PM 10 A. Yep. I believe so.

01:42PM 11 Q. Okay. On the subject of that, I'm going to also ask you

01:42PM 12 some specific questions like Mr. Foti did, these are going to

01:42PM 13 be yes-or-no questions; do you understand?

01:42PM 14 A. Yes.

01:42PM 15 Q. Okay. With respect to that letter of reprimand, did your

01:42PM 16 agency find that there was no malicious intent?

01:42PM 17 A. Yes.

01:42PM 18 Q. Did your agency find that you had no trust issues with

01:42PM 19 management?

01:42PM 20 A. Yes.

01:42PM 21 Q. Did your agency find that you had an excellent prior work

01:42PM 22 record and remorse about what occurred?

01:42PM 23 A. Yes.

01:42PM 24 Q. Did they find that it was from family-related issues?

01:42PM 25 A. Yes.

01:42PM 1 Q. Okay. You were asked some questions on cross-examination
01:42PM 2 about marijuana laws in the around the time that Bongiovanni
01:42PM 3 tells you, you better hurry up and arrest Anthony Gerace
01:42PM 4 before they make it legal; do you remember that?
01:42PM 5 A. Yes.
01:42PM 6 Q. Okay. As a DEA agent, were both you and Joe Bongiovanni
01:43PM 7 responsible for enforcing federal drug laws?
01:43PM 8 A. Yes.
01:43PM 9 Q. Is that under Title 21 of the United States Code?
01:43PM 10 A. Yes.
01:43PM 11 Q. Does that have anything do with whether New York or
01:43PM 12 Nevada or any other state decriminalizes marijuana?
01:43PM 13 A. No.
01:43PM 14 Q. Nothing at all, right?
01:43PM 15 A. No.
01:43PM 16 Q. Okay. At the time Bongiovanni said it, was a sworn DEA
01:43PM 17 agent responsible for investigating and pushing forward for
01:43PM 18 prosecution people who trafficked in large amounts of
01:43PM 19 marijuana?
01:43PM 20 A. Yes.
01:43PM 21 Q. Was that part of your job?
01:43PM 22 A. Yes.
01:43PM 23 Q. Was it part of Bongiovanni's job?
01:43PM 24 A. Yes.
01:43PM 25 Q. Did individual DEA agents get to decide like, hey,

01:43PM 1 New York's decriminalizing it, so I just don't care anymore?

01:43PM 2 A. No.

01:43PM 3 Q. Okay. You were asked some questions on cross-examination

01:44PM 4 about ultimately being walled off from the investigation into

01:44PM 5 Bongiovanni and an investigation into Gerace; do you remember

01:44PM 6 being asked questions about that?

01:44PM 7 A. Yes.

01:44PM 8 Q. Was it your understanding that you were walled off

01:44PM 9 because you had been determined to be a fact witness in that

01:44PM 10 case?

01:44PM 11 A. Yes.

01:44PM 12 Q. I want to kind of walk through for the -- make sure the

01:44PM 13 jury understands. When we say "fact witness," do you

01:44PM 14 understand what I'm talking about?

01:44PM 15 A. Yes.

01:44PM 16 Q. Okay. As a law enforcement officer, generally, is your

01:44PM 17 role that of an investigating agent?

01:44PM 18 A. That's correct.

01:44PM 19 Q. Okay. Did the circumstances surrounding things

01:44PM 20 Bongiovanni had said to you and your interactions with him

01:44PM 21 kind of shift your role to a person who would end up on the

01:44PM 22 witness stand testifying in -- in proceedings?

01:44PM 23 A. Yes.

01:45PM 24 Q. Was that your understanding of why you were walled off

01:45PM 25 from working on those cases?

01:45PM 1 A. Yes.

01:45PM 2 Q. Mr. Foti asked you some questions towards the beginning

01:45PM 3 of his cross-examination about the classmate who made

01:45PM 4 comments about sniffing coke off of strippers' bodies, and he

01:45PM 5 asked you if you took him seriously; do you remember that

01:45PM 6 question?

01:45PM 7 A. Yes.

01:45PM 8 Q. And I think -- I forget the person's first name, but you

01:45PM 9 said I know -- what's his first name?

01:45PM 10 A. John.

01:45PM 11 Q. John Mayer, is that it?

01:45PM 12 A. Maher.

01:45PM 13 Q. Maher, sorry. John Mayer is the musician. John Maher.

01:45PM 14 You said I know John Maher, right? Is that what you said

01:45PM 15 in response to his question?

01:45PM 16 A. Correct.

01:45PM 17 Q. Why did knowing John Maher cause you to take that

01:45PM 18 seriously? Tell them.

01:45PM 19 A. He was on the wild side. Partying, drugs, alcohol.

01:45PM 20 Q. Was it consistent with what you knew about him?

01:46PM 21 A. Yes.

01:46PM 22 Q. When Mr. Foti asked you some questions on

01:46PM 23 cross-examination about conversations that you had with FBI

01:46PM 24 Special Agent Tom Herbst around the time of 2010; do you

01:46PM 25 remember those questions?

01:46PM

1 A. Yes.

01:46PM

2 Q. Okay. I think twice on cross you indicated that you came

01:46PM

3 to an understanding that Herbst knew that Gerace and

01:46PM

4 Bongiovanni knew each other; is that what you learned from

01:46PM

5 those communications?

01:46PM

6 A. Yes.

01:46PM

7 Q. Okay. You were asked some questions about the fact that

01:47PM

8 when you discovered Bongiovanni's phone number in Gerace's

01:47PM

9 records, that you didn't document that in a 6; do you recall

01:47PM

10 that?

01:47PM

11 A. I recall.

01:47PM

12 Q. Okay. Were you investigating Bongiovanni at that time?

01:47PM

13 A. No.

01:47PM

14 Q. Did you alert your supervisor as you had been directed to

01:47PM

15 do?

01:47PM

16 A. Yes.

01:47PM

17 Q. Did he direct you to put it in a 6?

01:47PM

18 A. No.

01:47PM

19 Q. Did you view it at that time, at that moment, as a part

01:47PM

20 of an investigation that you had going on?

01:47PM

21 A. No.

01:47PM

22 Q. Was it just kind of an uncomfortable thing that was

01:47PM

23 occurring in the workplace?

01:47PM

24 A. Yes.

01:47PM

25 **THE COURT:** You're talking about a 6, I think --

01:47PM

1

MR. COOPER: I'm sorry.

01:47PM

2

THE COURT: It might be a good idea to let the jury

01:47PM

3

know what a 6 is.

01:47PM

4

MR. COOPER: Thank you. I appreciate that, Judge.

01:47PM

5

And sometimes I take that for granted.

01:47PM

6

BY MR. COOPER:

01:47PM

7

Q. DEA puts things in reports; is that right?

01:47PM

8

A. Correct.

01:47PM

9

Q. Reports of investigations that agents document, are those

01:47PM

10

called DEA-6 reports?

01:47PM

11

A. Correct.

01:47PM

12

MR. COOPER: So, Ms. Champoux, can we pull up 30A for

01:47PM

13

one second? Well, for more than one second. Keep it up

01:47PM

14

there.

01:47PM

15

BY MR. COOPER:

01:47PM

16

Q. Is this an example of a DEA-6 report?

01:48PM

17

A. Yes.

01:48PM

18

Q. And up here where it says report of investigation, is

01:48PM

19

this where you document investigative activity?

01:48PM

20

A. That's correct.

01:48PM

21

Q. Okay.

01:48PM

22

MR. COOPER: You can take that down, Ms. Champoux.

01:48PM

23

BY MR. COOPER:

01:48PM

24

Q. At the time that you discovered Bongiovanni's phone

01:48PM

25

number in Mr. Gerace's phone records, did you view that as a

01:48PM 1 part of your investigative activity?

01:48PM 2 A. No.

01:48PM 3 Q. Okay. Years later, did it become pertinent to you?

01:48PM 4 A. It became pertinent, and after meeting with him in the
01:48PM 5 conference room, things shifted.

01:48PM 6 Q. Okay. But at that time when it first is known to you,
01:48PM 7 it's just uncomfortable, right?

01:48PM 8 A. Correct.

01:48PM 9 Q. You were asked some questions by Mr. Foti on
01:48PM 10 cross-examination about Government Exhibit 99 at page 14.

01:48PM 11 **MR. COOPER:** On the left side of the screen,
01:49PM 12 Ms. Champoux, can you pull up Government Exhibit 99 and go to
01:49PM 13 page 14?

01:49PM 14 And just if you're able to -- thank you so much.

01:49PM 15 And then on the right side of the screen can you pull
01:49PM 16 up what's in evidence as Government Exhibit 426-1.

01:49PM 17 **BY MR. COOPER:**

01:49PM 18 Q. On the left, is that a picture of your high school
01:49PM 19 reunion, for your 30-year high school reunion?

01:49PM 20 A. Yes.

01:49PM 21 Q. Can you estimate for the jury about how many people do
01:49PM 22 you think were there?

01:49PM 23 A. 50 or so, maybe.

01:49PM 24 Q. Okay. Can you tell the jury how many people are in the
01:49PM 25 picture on the right?

01:49PM 1 A. Four.

01:49PM 2 Q. Okay. In the left, in the picture on the left, everybody
01:49PM 3 has those white stickers on their shirt. What's that?

01:49PM 4 A. Name tags.

01:49PM 5 Q. Does anybody have name tags on in the picture on the,
01:49PM 6 right?

01:49PM 7 A. No.

01:49PM 8 Q. Why do people wear name tags?

01:49PM 9 A. Over the years people aren't in contact, they look
01:49PM 10 different after 30 years, and you might not know who's who in
01:50PM 11 your class.

01:50PM 12 Q. It's because not everybody in that picture might even
01:50PM 13 know each other, right?

01:50PM 14 **MR. FOTI:** Judge, objection.

01:50PM 15 **THE COURT:** No, overruled.

01:50PM 16 **BY MR. COOPER:**

01:50PM 17 Q. They might not recognize each other, right?

01:50PM 18 A. They might not recognize each other is my belief.

01:50PM 19 Q. Okay. Do the people in the picture on the right in
01:50PM 20 426-1, do they appear to know each other?

01:50PM 21 A. I mean, looking at that picture, yes.

01:50PM 22 Q. Okay. No name tags, right?

01:50PM 23 A. No.

01:50PM 24 Q. This picture on the left, Government Exhibit 99 at
01:50PM 25 page 14, are you close personal friends with everyone in the

01:50PM 1 picture?

01:50PM 2 A. No.

01:50PM 3 Q. Do you maintain contact with everyone in the picture?

01:50PM 4 A. No.

01:50PM 5 Q. Why are you in the picture?

01:50PM 6 A. Because I graduated in that graduating class.

01:50PM 7 Q. Okay.

01:50PM 8 **MR. COOPER:** You can take those down, Ms. Champoux,
01:50PM 9 thank you.

01:50PM 10 **BY MR. COOPER:**

01:50PM 11 Q. You were asked some questions on cross-examination about
01:50PM 12 whether you were on a -- I think a, like, a men's league
01:51PM 13 hockey team with the defendant when you were in college?

01:51PM 14 A. Correct.

01:51PM 15 Q. Okay. How many people participated in that activity?

01:51PM 16 A. On that team?

01:51PM 17 Q. Sure.

01:51PM 18 A. Maybe 20.

01:51PM 19 Q. Okay. And were you close personal friends with all 20
01:51PM 20 people?

01:51PM 21 A. No.

01:51PM 22 Q. Did you just play rec league hockey with them?

01:51PM 23 A. Yeah. I had a friend of a friend that who knew someone,
01:51PM 24 and I was out of high school and wanted to still play hockey.

01:51PM 25 Q. Got it. You were asked some questions about the

01:51PM 1 different people that you disclosed the racist remarks that
01:51PM 2 Bongiovanni made to you; do you remember being asked those
01:51PM 3 questions?

01:51PM 4 A. Yes.

01:51PM 5 Q. Was it your responsibility, sir, to report to management
01:51PM 6 when it happened?

01:51PM 7 A. It was my responsibility, correct.

01:51PM 8 Q. You should have done that, right?

01:52PM 9 A. Yes.

01:52PM 10 Q. Okay. Did you tell other people about what happened
01:52PM 11 because it troubled you?

01:52PM 12 A. Yes, very troubling.

01:52PM 13 Q. Okay. I think on direct examination, you described it as
01:52PM 14 a something like a shit sandwich that happened, is that -- is
01:52PM 15 that how it felt? Like you had something awful to deal with?

01:52PM 16 A. It was a horrible situation, yes.

01:52PM 17 Q. Okay. You told these other people about it, is it fair
01:52PM 18 to say, based on your involvement in those conversations,
01:52PM 19 none of them were jumping and chomping at the bit to get
01:52PM 20 involved in your shit sandwich?

01:52PM 21 A. No.

01:52PM 22 Q. Okay. Ultimately, you described on direct examination
01:52PM 23 reasons why you made the choice that you made which was to
01:52PM 24 not immediately report it; do you remember describing that?

01:52PM 25 A. Yes.

01:52PM 1 Q. And on cross-examination, you were questioned about when
01:53PM 2 you chose to report it. Let's focus on that.

01:53PM 3 When you ultimately did report what Joe Bongiovanni said
01:53PM 4 to you about who you should be investigating and when he used
01:53PM 5 racial slurs, when you reported that, what happened to you at
01:53PM 6 work?

01:53PM 7 A. Multiple things. Things that I believe basically came
01:53PM 8 true. It was very hurtful, still bothers me.

01:53PM 9 People that I trusted a lot stopped talking to me, not
01:53PM 10 knowing the full facts that I couldn't talk about anyways.

01:53PM 11 A police officer that was assigned to our office as a
01:53PM 12 task force officer that I knew from the police academy when I
01:53PM 13 was a police officer, literally crossed the street when she
01:53PM 14 saw me.

01:53PM 15 People on my own group ostracized me to some extent that
01:53PM 16 I worked nights on a wiretap case just so I wouldn't have to
01:53PM 17 go into the office.

01:53PM 18 There were numerous things.

01:53PM 19 Q. Did it cause you a lot of hard, like, difficulty and
01:54PM 20 hardship at work?

01:54PM 21 A. Probably more than anything else that happened in the
01:54PM 22 whole --

01:54PM 23 Q. Was it a pleasant experience for you after?

01:54PM 24 A. It was the worst experience of my career.

01:54PM 25 Q. Is that what you had feared when you chose to hold into

1 it -- hold onto it and not report it?

2 A. Yeah, it all came true.

3 Q. By reporting it, did you get some benefit, did things get

4 good for you in any way?

5 A. No.

6 **MR. COOPER:** Just one second please, Judge.

7 **BY MR. COOPER:**

8 Q. Just to put a finer point on that, did you ultimately

9 transfer to a task force at the FBI?

10 A. I did.

11 Q. Why?

12 A. The supervisor of that group was a friend of mine from

13 Las Vegas, the FBI agent, he worked in our office in

14 Las Vegas, and they were starting a new task force. And he

15 asked if I would be interested to come over to the task

16 force. And I jumped at the opportunity to work with them and

17 get out of my office because of the situation that was going

18 on in my office.

19 And I didn't think I'd be allowed to -- I didn't think

20 DEA would allow me to go work at FBI. But his special agent

21 in charge met with my special agent in charge in New York

22 City, and they allowed me to go over. And it was probably

23 the best year and a half, two years of my time in Buffalo.

24 **MR. COOPER:** I'm good, Judge, thank you.

25 **THE COURT:** Any re-cross?

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MR. FOTI: Yes, Judge.

RECROSS-EXAMINATION BY MR. FOTI:

Q. Sir, when you saw Peter Gerace in college for the hockey, you didn't need a name tag to recognize him, did you?

A. No.

Q. When you saw him at Brennan's, the bar that you said you -- you gave him your phone number at, you didn't need -- he didn't need a name tag for you to recognize him, correct?

A. No.

Q. And you weren't wearing a name tag, correct?

A. No.

Q. And he recognized you there, correct?

A. Yes.

Q. And you even had a conversation that ended in giving Mr. Gerace your phone number, correct?

A. Correct.

Q. At the reunion, you were both wearing name tags, right?

A. Yes.

Q. You didn't need the name tag to recognize that Peter Gerace was Peter Gerace, right?

A. No.

Q. And presumably, he would have recognized you whether you were wearing the name tag or not, right?

A. Yes.

01:56PM 1 Q. You talked about just now how after making the claim that
01:57PM 2 Mr. Bongiovanni used racial slurs, the number of members of
01:57PM 3 law enforcement didn't want to interact with you anymore; is
01:57PM 4 that right?

01:57PM 5 A. There were numerous in my office.

01:57PM 6 Q. Okay. And -- and you said there was even an incident of
01:57PM 7 somebody that you had previously known cross the street and
01:57PM 8 it appeared they were trying avoid you?

01:57PM 9 A. Correct.

01:57PM 10 Q. And this was a perception developed based on the way
01:57PM 11 people were acting towards you within your office, correct?

01:57PM 12 A. It was based on that, the timeframe, everything.

01:57PM 13 Q. Did anybody communicate to you that, hey, we don't think
01:57PM 14 you should have said what you said about Mr. Bongiovanni?

01:57PM 15 **MR. COOPER:** Objection. Calls for hearsay.

01:57PM 16 **THE COURT:** No. Absolutely not. Overruled.

01:57PM 17 **THE WITNESS:** Could you repeat the question?

01:57PM 18 **BY MR. FOTI:**

01:57PM 19 Q. Did anybody have a conversation with you about it within
01:57PM 20 your office, these people you're talking about?

01:58PM 21 A. Oh, they wouldn't talk to me.

01:58PM 22 Q. They wouldn't talk to you?

01:58PM 23 A. No.

01:58PM 24 Q. Okay. So nobody told you that they're upset with you
01:58PM 25 because you -- you'd gave the story about Mr. Bongiovanni?

01:58PM 1 A. They didn't talk to me.

01:58PM 2 Q. Okay. That was something that you perceived based on the
01:58PM 3 timing of all of this, right?

01:58PM 4 A. Absolutely.

01:58PM 5 Q. All right. And you have no idea whether those people
01:58PM 6 believed anything that you alleged happened in that meeting?

01:58PM 7 A. I'm sorry, could you repeat that question?

01:58PM 8 Q. You have no idea whether any of these people in your
01:58PM 9 office believed anything that you said about what happened in
01:58PM 10 that meeting?

01:58PM 11 **MR. COOPER:** Objection, Judge.

01:58PM 12 **THE COURT:** Overruled.

01:58PM 13 **THE WITNESS:** Whether I knew if they believed? I'm
01:58PM 14 sorry, I'm trying to understand the question.

01:58PM 15 **BY MR. FOTI:**

01:58PM 16 Q. It's okay. You didn't talk to anybody in your office
01:58PM 17 about this, right? You said they wouldn't talk to you
01:58PM 18 anymore?

01:58PM 19 A. They didn't. They stopped talking to me, several people.

01:58PM 20 Q. Okay. You never asked them what their opinions were on
01:58PM 21 the fact that you reported this, this alleged conversation?

01:58PM 22 A. I never asked them that.

01:58PM 23 Q. They never told you what their position is on it, right?

01:58PM 24 A. They didn't talk to me.

01:58PM 25 Q. Nobody told you whether they believe it or not, right?

1 A. They didn't talk to me.

2 **MR. FOTI:** Could I just have a moment, Judge?

3 **THE COURT:** Sure.

4 **MR. FOTI:** I have nothing further, thank you.

5

6 **RE-REDIRECT EXAMINATION BY MR. COOPER:**

7 Q. The people who ignored you, were they people that were
8 close in the office with Bongiovanni?

9 A. Some.

10 Q. You said that people didn't discuss it with you. Did
11 people essentially bad mouth you in your own office about
12 what you did?

13 A. I believe so.

14 Q. Did you learn --

15 **MR. FOTI:** Objection.

16 **THE COURT:** Yeah, sustained. Let's have some
17 foundation for that.

18 **MR. COOPER:** Sure.

19 **BY MR. COOPER:**

20 Q. Were there comments made about the fact that you brought
21 a report over to the U.S. Attorney's Office regarding a
22 report that Bongiovanni had written, were there comments made
23 about you providing reports to the U.S. Attorney's Office or
24 working closely with the U.S. Attorney's Office?

25 A. Oh. There were comments about me working with the U.S.

02:00PM 1 Attorney's Office regarding this investigation.

02:00PM 2 Q. Okay. And is that in relation to what you disclosed with
02:00PM 3 respect to Mr. Bongiovanni?

02:00PM 4 A. Oh, I believe so.

02:00PM 5 Q. Okay. Tell the jury what they were.

02:00PM 6 A. Oh, I --

02:00PM 7 **MR. FOTI:** Objection, Judge.

02:00PM 8 **THE COURT:** Sustained. Unless -- unless -- the first
02:00PM 9 question that you asked could call for hearsay, and we're not
02:00PM 10 going to get into hearsay. If it's -- if it's not hearsay,
02:00PM 11 it's a different story.

02:00PM 12 **MR. COOPER:** Judge, I'm certainly not offering it for
02:00PM 13 the truth of the matter asserted. If you know what the ans --
02:00PM 14 I can come up and proffer what I expect the answers
02:00PM 15 are gonna be, it's not hearsay.

02:00PM 16 **THE COURT:** Come on up. It may be hearsay.

02:00PM 17 **MR. COOPER:** I'm sorry, my position is that I don't
02:00PM 18 believe it's hearsay.

02:00PM 19 (Sidebar discussion held on the record.)

02:00PM 20 **THE COURT:** So -- so if he heard these things
02:00PM 21 himself --

02:00PM 22 **MR. COOPER:** Yeah.

02:00PM 23 **THE COURT:** -- then they're not hearsay.

02:01PM 24 **MR. COOPER:** Yeah, he did.

02:01PM 25 **THE COURT:** If somebody says to him so-and-so bad

1 mouthed you, that's a whole different story.

2 **MR. COOPER:** I can do a better job.

3 **THE COURT:** Okay. That's fine. I just want you to
4 understand --

5 **MR. COOPER:** I do.

6 **THE COURT:** -- that there could be a layer of hearsay
7 here that you're not recognizing.

8 **MR. COOPER:** I appreciate -- I appreciate that. I'll
9 do a tighter job asking the question then.

10 **MR. TRIPI:** People told him, told him directly things
11 like they should take a crane to the U.S. Attorney's Office,
12 directly to him.

13 **THE COURT:** He should? I think you should?

14 **MR. TRIPI:** No, they -- they commented directly to
15 Casullo, like, they basically talked smack to him, and he will
16 be able to firsthand relay --

17 **MR. COOPER:** That he heard it.

18 **THE COURT:** Like, you're a jerk for talking to the
19 U.S. Attorney's Office, in essence?

20 **MR. TRIPI:** Correct. Yes.

21 **THE COURT:** That's fine. That's a different story.

22 **MR. COOPER:** Understood. I'll lay a foundation.

23 (Sidebar discussion ended.)

24 **BY MR. COOPER:**

25 Q. I just want to be clear exactly on what I'm asking you.

02:01PM 1 I'm asking you about things that you heard with your own
02:01PM 2 ears come out of other people's mouths.

02:01PM 3 Did you hear with your ears other people essentially
02:01PM 4 talking smack or saying negative things about your decision
02:01PM 5 to report this conduct to the U.S. Attorney's Office?

02:02PM 6 A. It was things about working with the U.S. Attorney's
02:02PM 7 Office.

02:02PM 8 Q. Okay. That you heard; is that fair?

02:02PM 9 A. Oh, right in front of me.

02:02PM 10 Q. From your DEA colleagues?

02:02PM 11 A. Two in particular that were in my group in the task force
02:02PM 12 before I went over to the FBI.

02:02PM 13 Q. Tell the jury what you heard.

02:02PM 14 A. One individual said that we shouldn't work with the U.S.
02:02PM 15 Attorney's Office. We should use a crane and destroy the
02:02PM 16 building.

02:02PM 17 We had another -- another agent said right in front of me
02:02PM 18 that my partner, Curtis Ryan, from Homeland Security was a
02:02PM 19 rat bastard, and some day he'll get his.

02:02PM 20 Q. What's it mean to be a "rat bastard," in that context?

02:02PM 21 A. A rat bastard means to inform or say something about
02:02PM 22 another person, a snitch.

02:02PM 23 Q. Have you heard of that thin blue line spoken about
02:02PM 24 before?

02:02PM 25 A. Oh, absolutely.

02:02PM 1 Q. What's that mean?

02:02PM 2 A. "Thin blue line" means even when there's wrongdoing,
02:02PM 3 officers are unwilling to come forward and speak in order to
02:02PM 4 keep their secrecy and their unit together.

02:02PM 5 Q. Were those comments directed at you indicating that you
02:02PM 6 violated some unspoken agreement not to talk about law
02:03PM 7 enforcement misconduct?

02:03PM 8 A. I -- absolutely.

02:03PM 9 **MR. FOTI:** Objection.

02:03PM 10 **THE COURT:** I'm sorry?

02:03PM 11 **MR. FOTI:** Objection.

02:03PM 12 **THE COURT:** Yeah, sustained. The jury will strike
02:03PM 13 that answer.

02:03PM 14 **BY MR. COOPER:**

02:03PM 15 Q. When you reported that Joe Bongiovanni, at the time a DEA
02:03PM 16 special agent, said racist things to you in relation to your
02:03PM 17 investigation of his friend Peter Gerace, did you get
02:03PM 18 ostracized at work by your DEA colleagues?

02:03PM 19 A. Absolutely.

02:03PM 20 Q. Was that fun for you?

02:03PM 21 A. It was miserable.

02:03PM 22 **MR. COOPER:** Okay. I'm good. Thank you, Judge.

02:03PM 23 **THE COURT:** Anything more Mr. Foti?

02:03PM 24 **MR. FOTI:** No, thank you, Judge.

02:03PM 25 **THE COURT:** Okay. You can step down, sir. Thank

02:03PM 1 you.

02:03PM 2 **THE WITNESS:** Thank you, Judge.

02:03PM 3 (Witness excused at 2:03 p.m.)

4 (Excerpt concluded at 2:03 p.m.)

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CERTIFICATE OF REPORTER

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In accordance with 28, U.S.C., 753(b), I

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certify that these original notes are a true and correct

15

record of proceedings in the United States District Court for

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the Western District of New York on November 21, 2024.

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s/ Ann M. Sawyer

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Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

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NOVEMBER 21, 2024

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